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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th February, 2016

\+ **MAC.APP. 769/2014 & CM APPL. 13808/2014 (stay)**

DEVENDER KUMAR & ANR

..... Appellant

Through Mr. Nagendra Kasana and Mr. Vishwajeet Tiwari, Advs.

versus

M/S NEW INDIA ASURRANCE CO. LTD & ORS

..... Respondent

Through None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. There is no appearance on behalf of the insurance company for the second consecutive date.

2. The appeal challenges the recovery rights granted to the insurance company. A short issue is raised in this appeal under Section 173 of Motor Vehicles Act, 1988 (MV Act) by the appellants who concededly were the owner and driver respectively of motor vehicle bearing registration No.HR-38G-7439 described as the offending vehicle in the claim petition presented by the third respondent herein before the Motor Accident Claims Tribunal (the Tribunal), registered as suit No.600/10/2008. The appellants were impleaded in the said claim

petition as party respondents on the allegations that a motor vehicular accident had been caused due to rash or negligent driving on the part of the second appellant herein causing injuries to the claimant (the third respondent in the appeal), at about 12.30 PM on 15.03.2008 near Narula Farm, Pushta Road, Madanpur Khadar, Delhi. The claimant was awarded compensation in sum of ₹9,27,129/- with interest. The Tribunal upheld the contention of the first respondent (the insurer) that there was a breach of the terms of the policy inasmuch as the driver (the second appellant) was not holding a valid and effective licence. In view of the insurance cover, the first respondent was directed to pay the compensation but at the same time it was granted the right to recover the said amount from the appellants.

3. The findings and observations on the basis of which the aforementioned direction giving recovery rights to the first respondent are recorded in (paras 30 and 31 of) the impugned judgment dated 25.03.2014 as under :

> *"30. Liability:- Ld. Counsel for the insurance company submitted that on the date of accident, respondent driver was not having valid licence to drive the vehicle as his licence was already expired, in this regard insurance company examined R2W1 Gulshan Kumar, Senior Clerk, RTO Agra who stated that the Hence was expired on 09.03.2008.*
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> *31. Accident took place on 15.03.2008, thus respondent no. 3 not found with valid and effective licence on the date of accident i.e 15.03.2008. Respondent driver Saroj Kumar not opted to lead any evidence to the contrary. R4 stopped appearing and not led any evidence. Hence adverse inference to be drawn against the owner (R4). Thus R4 is found to have willfully breached the terms and conditions of the policy. Insurance company able to prove its defence*

that driver and owner is not holding a valid and effective driving licence to drive the offending vehicle, hence insurance company is entitled to recovery rights from R3 and R4 after discharging its liability within 30 days."

4. The appeal was taken up on 26.08.2014 and notice was issued only to the first respondent. The matter was directed to be listed on 13.02.2015. On the said date the hearing was adjourned to 12.10.2015. On the next date, none appeared for the first respondent. The appeal was adjourned for today. Once again none has appeared for the first respondent in spite of repeated calls and the matter being passed over and taken up again in the post-lunch session.

5. Given the short area of dispute, and disinterest of the insurer, there is no need for hearing to be adjourned yet again.

6. In *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297, a bench of three Hon'ble Judges of the Supreme Court considered similar issues and summarised the findings in para 110, sub-para (vi) whereof is relevant for the present purposes and may be extracted as under :-

"(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act."

7. It is not a case whereby driver was not holding a licence at all. He was holding a licence when the owner of the offending vehicle had engaged him for the purpose of driving it on the public road. It only so happened that the validity of the licence expired on 09.03.2008. The accident occurred on 15.03.2008. The non-renewal of the licence within the period of validity cannot be treated as a fundamental breach so as to exonerate the insurance company of its liability. There is no case made out that the expiry of the driving licence would have resulted in the driver contributing to the negligence.

8. Thus, the appeal is allowed. The directions regarding recovery rights granted to the first respondent are set aside.

9. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

FEBRUARY 10, 2016
VLD