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

Date of Decision: 22nd April, 2016

+ **MAC.APP. 383/2009**

THE ORIENTAL INSURANCE CO. LTD Appellant
Through: Mr. A K Soni, Adv.

versus

SHAMIM KHAN & ORS Respondents
Through: Mr. Deepak Kohli, Adv. for R-2 and
LRs of R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA
JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 09.07.2001, Shamim Khan (first respondent herein) suffered injuries in motor vehicular accident involving negligent driving of motor vehicle described as truck tanker bearing registration No.HR 38C 5029 (the offending vehicle) which was admittedly registered in the name of third respondent herein (the owner), it being concededly driven at the given point of time by the second respondent herein (the driver). The offending vehicle was insured against third party risk with the appellant insurance company (insurer) for the period in question.

2. The first respondent (the claimant) instituted an accident claim case (petition No.967/2004) under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation. The petition was contested, *inter alia*, by the insurer, it pleading that there was a breach of terms and

conditions of the insurance policy as the driver was not holding a valid or effective driving licence for purposes of the offending vehicle.

3. The tribunal by judgment dated 24.04.2009 upheld the case of the claimant about the injuries having been suffered by him in the accident caused due to negligent driving of the offending vehicle. It awarded compensation in the sum of ₹1,65,920/- with interest at 9% per annum from the date of filing of the petition till realization. The contention of the insurer about breach of terms and conditions of the insurance policy was rejected and the insurer was held liable to indemnify.

4. By appeal at hand, the insurer presses for recovery rights reiterating that the driving licence produced by the driver (Ex.R3W1/5) was not valid or effective for purposes of offending vehicle. It is pointed out that the said driving licence authorized the driver to drive motor vehicles in the nature of a motorcycle or tractor (non-transport). It is the submission of the insurance company that the offending vehicle here falls in the category of medium goods vehicle within the meaning of the expression defined in Section 2(23) of MV Act and, therefore, the said driving licence cannot be relied upon to contend that the driver was authorized.

5. *Per contra*, the owner resists the appeal placing reliance on *National Insurance Company v. Annappa Irappa Nesaria* 2008 (1) TAC 812 (SC) submitting that since the unladen weight of the offending vehicle was 3,150 kgs only, the offending vehicle falls in the category of light motor vehicle, as defined in Section 2(21) of MV Act. On this basis it is argued that the vehicle would not fall in the medium goods vehicle as defined in Section 2(23) and thus, the licence (Ex.R3W1/5) was valid and effective.

6. When the matter was heard on the last date of hearing, it was found that no document had been brought on record during inquiry before the tribunal to indicate the particulars of the offending vehicle. The owner and driver were, thus, directed by order dated 06.04.2016 to discover on oath the copy of the registration certificate of the offending vehicle. Strict compliance with the said order has not been made as the document has not been discovered on oath. None the less, at the hearing the counsel for the third respondent (owner) submitted photocopies of three pages of the registration certificate of the offending vehicle which have been taken on record. He points out from the said document that the unladen weight of the offending vehicle was 3,150 kgs. On the other hand, the counsel for the appellant insurer pointed out that the same document shows the gross weight to be 9,000 kgs. This, in his submission shows that the offending vehicle would not fall in the category of light motor vehicle within the meaning of Section 2(21) of MV Act.

7. The expression light motor vehicle is defined by Section 2(21) of MV Act as under :

“light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms”.

8. Even a plain reading of the provision shows that the factor of “unladen weight” is relevant only in cases of vehicles in the nature of “motor car, or tractor or road roller” whereas in the case of other motor vehicles it is the “gross vehicle weight” which is relevant to determine as to whether it would fall in the category of light motor vehicle or not. Since

according to the document filed by the owner himself, the gross vehicle weight of the offending vehicle is 9,000 kgs, it not being a motor car or a tractor or a road roller, it goes out of the category of light motor vehicle and would fall within the category of “medium goods vehicle” as defined in Section 2(23) of MV Act, it admittedly not being “a heavy goods vehicle” as defined in Section 2(16) of MV Act, inasmuch as the gross vehicle weight or the unladen weight here does not exceed 12,000 kgs.

9. Thus, it is found that the offending vehicle is a medium goods vehicle and therefore, the contention that the driving license (Ex.R3W1/5) would be valid and effective in its respect must be rejected.

10. In view of the above finding the contention of the insurance company that there was a breach of terms and conditions of the insurance policy must be upheld. Consequently, the impugned judgment insofar as it rejected the contention to above effect raised by the insurer is set aside. Since the above facts constitute a breach of terms and conditions of the policy, the insurance company is held entitled to recovery rights against the third respondent (the owner). The insurance company is given liberty to take out appropriate proceedings before the tribunal to enforce the said right in accordance with law.

11. The statutory amount, if deposited, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 22, 2016/VLD