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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 3rd March, 2016

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MAC.APP. 569/2010

ORIENTAL INSURANCE CO. LTD

..... Appellant

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv.

versus

BHUPINDER KAUR & ORS.

..... Respondents

Through: Mr. Saurabh Kansal, Adv. for R-1 &
3.
Mr. Ashok Singh & Mr. Anil Dhaka,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 06.03.2010, the motor accident claims tribunal (the tribunal) decided the motor accident claim case registered as Suit No. 334/2008 brought by the first respondent and awarded compensation in the sum of ₹ 3,06,000/- with interest on account of death of Bishan Singh in a motor vehicular accident that occurred at about 7.30 a.m. on 05.07.2004 upon being hit by car bearing No. DL 8C 9513 at a time when he was crossing the road near Kamal Taxi stand, Safdarjung Enclave, New Delhi. The car was concededly owned and driven by the second respondent and was insured against third party risk for the period in question by the insurer.

The third respondent being daughter of the deceased Bishan Singh was impleaded as proforma party.

2. Before the tribunal, the second respondent (owner/driver of the car) opted to suffer the proceedings *ex-parte*. The case was contested by the appellant (insurer) on the question of negligence on the part of the car driver. The tribunal framed issues and again called upon the claimant to adduce evidence. She led evidence on which basis the averment about the rash/negligent driving of the car was proved. Noticeably, the insurance company in its written statement, *inter alia*, took the plea that its liability to indemnify would be subject to the driver of the car holding a valid and effective driving license. No evidence, however, was adduced before the tribunal to show any facts having bearing on the said plea.

3. Upon being fastened with the liability to pay compensation awarded by the impugned judgment, the insurance company by appeal at hand raises two questions. The first plea is that negligence has not been properly proved. The second contention is that the driver/owner of the car was not holding a valid driving license as the verification by an investigator engaged by the insurance company has shown that the document proffered as the driving license was fake.

4. With permission taken under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the insurance company adduced evidence at the stage of the appeal by examining Abhishek Tripathi (AW-1) an Administrative Officer and Shashi Kant Chanana (AW-2), the investigator. Though opportunity was available, the second respondent (the owner/driver of the car) did not participate in the proceedings relating to

recording of the evidence, and, thus, the evidence of AW-1 and AW-2 has gone unchallenged.

5. It may be noted that though the insurance company during inquiry before the Tribunal took steps to examine the concerned official from the office of RTO Kalka, Haryana, which purported to have issued the driving license in question, the official would not appear. No request was made for any duress process to be issued to enforce the attendance.

6. *Per contra*, the counsel for the second respondent argued that the driving license held by him was a genuine document and that the report of investigation made by the person engaged by the person engaged by the insurer cannot be believed.

7. Having heard counsel on both sides, this Court finds no substance in arguments respecting proof of negligence. It be noted that the tribunal in para 6 of the impugned judgment examined documents relating to evidence gathered during the investigation of the corresponding police case and on such basis reached the finding that the accident had occurred due to negligence on the part of the car driver. Clearly, the principal of *res ipsa loquitur* stands attracted and the approach of the tribunal and conclusions of the tribunal cannot be questioned.

8. Having regard to the fact that the insurance company made no effort during the inquiry before the tribunal to prove its case of breach of terms and conditions of the policy on account of fake driving license and the fact that the evidence led through AW-1 and AW-2 by itself is not clinching inasmuch as the report of the investigator is not conclusive with no evidence brought in from the office of the concerned motor licensing officer and coupled with the fact that the second respondent joins the issue by claiming

that he was holding a genuine driving license, it is deemed proper that the limited inquiry in this regard is remitted to the tribunal for fresh adjudication. Ordered accordingly.

9. By order dated 27.08.2010, the insurance company had been directed to deposit the entire awarded amount with the Registrar General and upon such deposit being made, the same to be released to the claimants. The learned counsel for the claimants confirms that the compensation awarded by the tribunal has since been received. This satisfies the award insofar as the claim of the victim of the accident is concerned.

10. In above view, the insurance company and the second respondent (the owner/driver of the car) are directed to appear before the tribunal for limited inquiry in the nature mentioned above on 6th April, 2016. Since some evidence was adduced in the proceedings arising out of the appeal, in order to avoid duplication, it is directed that the tribunal may summon the record of this Court, for availing the said evidence already on board. The insurance company through counsel submits that it would need only to call the concerned RTO for proving the fact that the driving license shown was a fake document. The tribunal shall issue requisite process, on proper steps being taken by the insurance company, to enforce the attendance of the concerned official from the said office, inclusive if necessary by duress process. Needless to add, the second respondent shall also be entitled to adduce evidence in rebuttal. Should the tribunal arrive at a finding affirming the contention of the insurance company, it would consider grant of recovery rights on account of breach of the terms and conditions of the policy.

11. The statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 03, 2016/nk

