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

Date of Decision: 25.05.2016

+ MAC.APP. 814/2014 and CM No.14735/2014

M/S KATYAL TRANSPORTER & ANR Appellants

Through: Mr. Arjun Gadhoke, Advocate

versus

THE NEW INDIA ASSURANCE CO LTD & ORS Respondents

Through: Mr. J.P.N. Shahi, Advocate

+ MAC.APP. 815/2014 and CM No.14738/2014

M/S KATYAL TRANSPORT & ANR Appellants

Through: Mr. Arjun Gadhoke, Advocate

versus

THE NEW INDIA ASSURANCE CO LTD & ORS Respondents

Through: Mr. J.P.N. Shahi, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Bhola Prasad and Sri Pal were travelling in a truck bearing registration no.DLL-8632 (truck) on 30.12.1990. The truck met with an

accident having struck against a tree resulting in both Bhola Prasad and Sri Pal suffering injuries.

2. Two accident claim cases were filed, one on account of injuries suffered by Bhola Prasad (MACP 180/2012) and, the other, on account of injuries of Sri Pal (MACP 181/2012). Both the claim cases were clubbed for inquiry and decided by a common *exparte* judgment dated 20.01.2001 by the Motor Accident Claims Tribunal (tribunal) whereby Ran Bahadur (driver) and Devender Mohan Katyal (owner) of the truck were held jointly and severely liable. It may be mentioned here that in the said original claim petitions, the insurance company was not shown in the array of parties presumably because the claimants did not have the benefit of particulars of any insurance policy.

3. Both the said driver and owner later moved an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC), which was allowed and the said *exparte* judgment dated 20.01.2001 was set aside by order dated 17.08.2012 thereby reviving the proceedings before the tribunal. It is in the subsequent proceedings that the insurer was also impleaded as a party respondent.

4. The tribunal held further inquiry on the conclusion of which the two cases were decided afresh again by a common judgment dated 09.05.2014. It was again held that the accident had occurred due to negligent driving of the bus and thus holding the driver and owner jointly and severely liable to pay the compensation. In both the cases, the tribunal awarded compensation in the sum of ₹1,19,000/- for injuries suffered by Bhola Prasad and

₹2,60,800/- for injuries suffered by Sri Pal which were ordered to be paid with interest.

5. During the contest before the tribunal, the insurance company had pleaded two defences; one, that the cover note relied upon was a fake document and no premium had been received there against and, second, that the truck was put to use and brought on the road without a valid permit. After examining the evidence led, the tribunal held that the first contention could not be accepted as the cover note was admitted by a witness (an official of the insurance company) to have been issued after the payment of premium had been received and no evidence had been mustered to refute the same. The tribunal, however, found merit in the second contention and held that inspite of notice, the owner of the offending vehicle had failed to produce a valid permit and, on that basis, held it to be a case of breach of the terms and conditions of the insurance policy. Though the insurer was directed to satisfy the awards in both the cases, it was granted rights to recover the amounts thus paid from the owner of the offending vehicle.

6. The owner is in appeal questioning the above mentioned directions granting recovery rights in favour of the insurer in the two cases.

7. The learned counsel for the appellants argued that the insurance company had not taken the defence of absence of permit and therefore, the grant of recovery rights was improper. This argument cannot be accepted as the tribunal's judgment shows that the insurance company had raised the issue of breach of the terms and conditions of the insurance policy which contention was duly considered and dwelt upon by the tribunal. It is

conceded at the bar by the counsel for the appellants that no valid permit was produced during the inquiry before the tribunal and further that no valid permit is even claimed in these appeals to have been held by the owner at the relevant point of time, leave alone such document having been produced for perusal or consideration of the court.

8. Since the appellant is unable to produce a valid permit in respect of the offending vehicle even at this stage, the appeals are found to be unmerited and therefore, dismissed.

9. Stay granted earlier in these appeals against enforcement of the recovery rights is vacated. The insurance company is at liberty to recover the amounts under the said recovery rights in both cases.

10. The statutory deposits, if made, shall be refunded in both the cases only after confirming that the recovery rights have been satisfied.

11. The appeals and the pending applications are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016

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