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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14th January, 2016

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MACA 1007/2012

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Tarkeshwar Nath &
Mr. Onkar Nath, Advs.

versus

RAKESH KUMAR MISHRA & ORS. Respondents

Through: Mr. R. Sathish, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal by Oriental Insurance Company Ltd. raises a short question as to its liability to pay awarded compensation in favour of the first respondent (the claimant), in lieu of the third respondent (the owner of the offending vehicle) in terms of the award passed by the Motor Accident Claims Tribunal (hereinafter referred to as “the Tribunal”) in MACT case No. 458/2006 by judgment dated 2nd June, 2006.

2. The claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as “MV Act”) was preferred by the claimant before the Tribunal seeking compensation on account of injuries suffered in a motor vehicular accident that occurred on 8.7.2006 involving Jeep make Mahindra bearing registration No. UP15X9678 (hereinafter referred to as the “offending vehicle”) driven at the relevant point of time by the second respondent (the driver). During the inquiry

before the Tribunal, the insurance company admitted that the owner of the offending vehicle had taken out an insurance policy but denied its liability to pay compensation on the grounds that the driver did not have a valid driving license inasmuch as the driving licence (Ex.R3W1/4) which was presented by him (driver) to the police which investigated the FIR that had been registered concerning the accident, upon verification was found to be fake and also for the reason that the offending vehicle did not carry a valid permit in terms of the requirements of the MV Act even though it was being used as a goods carriage commercial vehicle. Both the contentions of the insurance company were rejected by the learned Tribunal thus holding it liable to pay compensation awarded in terms of the insurance policy.

3. The insurance company had requested for stay of the execution of the impugned award. But the same was declined by order dated 11th September, 2012 with observations that in case the appellant succeeded, it would be entitled to recovery rights against the owner and driver of the offending vehicle.

4. Against the above backdrop, the appeal has been resisted only by the owner (the third respondent). The driver (the second respondent) was duly served but has chosen not to appear or contest.

5. Arguments have been heard on both sides. The learned counsel, in the course of their submissions, have taken me through the record of the Tribunal.

6. It is not disputed by the owner (the third respondent) that the driving licence (Ex.R3W1/4), as was presented by the driver to the

investigating police purported to have been issued by Licensing Authority, Meerut, UP was found to be fake. This fact has been duly established on the basis of the evidence of Vikram Singh (R3W1) as also verified by a report dated 18th January, 2012 received by the Tribunal from the concerned Licensing Authority of Motor Vehicles Department of Meerut, UP, pursuant to summons sent to it for production of the record. The contention of the owner, however, has been that he had exercised due diligence and that before engaging the second respondent (the driver) on the offending vehicle he had seen his driving licence which appeared to be genuine and since the second respondent had been a local resident in the same locality and he had seen him working as a driver for last 15-20 years, he believed the driving licence thus shown to be genuine and therefore allowed him to use the vehicle.

7. The Tribunal agreed with the defence of the owner of the above vehicle and held that the fact that driving licence produced by the second respondent was fake will not come in the way of the insurance company being asked to discharge its liability in terms of the insurance policy.

8. In so far as the above aspect is concerned, I find no error in the view taken by the Tribunal. Reference need be made only to the following observations of the Supreme Court of India in *United India Insurance Co. Ltd. vs. Lehu & others* (2003) 3 SCC 338:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine,

the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

9. Noticeably, the appellant (insurer) did not lead any evidence to show that the owner of the vehicle had prior knowledge that the driving licence was forged.

10. The second contention concerning the requirement of valid permit was rejected by the Tribunal with the observation that “*as the offending vehicle is a jeep, therefore, it does not require any permit*”. But, as

pointed out by learned counsel for the appellant, the offending vehicle is registered, per the certificate (PW-1/F), with the Transport Department, UP as “light goods vehicle”. The insurance was also taken out by the owner under the package policy “goods carriage commercial vehicle”. Concededly, the liability of the insurer would be subject to compliance by the registered owner of the vehicle with all the requirements of the MV Act. Section 2(47) of the MV Act defines “transport vehicle” to mean a public service vehicle, goods carriage or educational institution bus etc. Section 66 of the MV Act stipulates the necessity for permit in respect of a motor vehicle intended to be used as “transport vehicle in any public place”. The expression “permit” is defined in Section 2(31) of the MV Act to mean a permit issued by a State or Regional Transport Authority or authority prescribed in this behalf under the act authorising the use of a motor vehicle as a transport vehicle.

11. In view of the above position, and the facts and circumstances of the case, it was not correct on the part of the Tribunal to proceed on the assumption that a jeep would not require a permit. On being asked, the learned counsel for the third respondent (the owner) submits that the registered owner did have a valid permit issued by the Transport Authority in respect of the offending vehicle for the period in question.

12. The above contention of the registered owner of the vehicle would need to be inquired into and adjudicated upon. In these circumstances, the limited question as to whether the offending vehicle was used for carriage of goods on a public place under the cover of a valid permit on the date of accident is remitted for inquiry and adjudication to the Tribunal. Needless to say, if the answer to the

question is found to be in the negative, the liability to pay the awarded compensation would have to be fastened on the owner of the offending vehicle and the insurance company will be entitled to recover the compensation paid to the claimant in terms of the impugned award.

13. The parties are directed to appear before the Tribunal for further proceedings in above light on 22nd February, 2016.

14. The statutory amount of ₹ 25,000/- ,if deposited, shall be refunded to the appellant.

15. The appeal is disposed of with above observations/directions.

16. The trial court record be returned.

**R.K. GAUBA
(JUDGE)**

JANUARY 14, 2016/nk