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

Date of Decision:18th May, 2016

\+ MAC.APP. 788/2014

HDFC ERGO GENERAL INSURANCE CO. LTD ..... Appellant

Through Ms.Suman Bagga and Mr.Pankaj Gupta, Advs.

versus

SUBHASH CHAND & ORS ..... Respondents

Through Mr.A.K. Srivastava, Adv. for R-3.

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. The first respondent (claimant) suffered injuries in a motor vehicular accident that occurred on 08.10.2011 statedly involving negligent driving of a skoda car bearing registration No. DL-2-FFF-0021 (the offending vehicle) admittedly owned by third respondent, it having been driven at the relevant point of time by the second respondent. The claimant instituted accident claim petition (Suit No. 80/2012) on 07.02.2012 in the wake of detailed accident report (DAR) submitted by the police on the basis of the evidence gathered during investigation of first information report (FIR) No. 215/2011 registered with police station Chitaranjan park respecting the said incident. In the said proceedings, the appellant insurance company (the insurer) was impleaded as a party, it having admittedly issued a third party risk insurance policy for the period in question.

2. During the inquiry before the Tribunal, the insurer took the plea that second respondent was holding a learner's licence at the time of the accident which had been seized during the investigation, as reported by the investigating police officer in detailed accident report (DAR). The insurer, *inter alia,* on the basis of this fact, prayed for exoneration.

3. The Tribunal whilst upholding the case of the claimant about negligent driving having led to injuries, awarded compensation in the sum of Rs. 1,30,000/- with interest in his favour directing the insurer to pay, rejecting its plea about breach of terms and conditions of the policy on the ground that learner's licence was valid and effective licence. It appears that the insurance company had also pointed out that the vehicle was being used by a person holding learner's licence without the caution sign in the form of label of "L" affixed on the vehicle. This, in view of the Tribunal, was insufficient to allow the insurer to avoid its liability.

4. The insurance company by the appeal at hand reiterates its case that it having been proved, *inter alia*, by the evidence of Shyama Charan Vats (R3W1), Assistant manager (Legal) and also by the report of the police in DAR that the second respondent was holding only a learner's licence, its plea about breach of terms and conditions of the policy should have been accepted.

5. The appeal has been filed after elapse of limitation period and so with application for condonation of delay (CM No.14250/2014). For the reasons stated in the application, the delay of 60 days in filing the appeal is condoned.

6. It is noted that the correctness of the evidence of R3W1 was not challenged. The said evidence read with DAR clearly brought home the fact that the second respondent was holding only a learner's licence. Though in their response the second and third respondent had submitted that the second respondent was accompanied by a person who was holding a valid driving licence, no evidence to prove the said fact was adduced. In absence of any such evidence, the plea cannot be accepted.

7. Section 3 of the Motor Vehicles Act, 1988 declares that no person shall drive motor vehicle in public place unless he holds an effective driving licence issued to him authorising him to drive a vehicle. Rule 3 of the Central Motor Vehicle Rules, 1989 declares that the provisions contained in Section 3(1) shall not apply to a person while receiving instruction or gaining experience in driving with the object of presenting himself for a test of competence to drive so long as such person is holder of an effective learner's licence and such person is accompanied by an instructor holding an effective driving licence to drive the vehicle, he (such instructor) sitting in such a position as to control or stop the vehicle.

8. In the absence of any evidence showing the presence of any other person with the second respondent who may have been holding a valid or effective driving licence, the plea of the insurer about the breach of terms and conditions of the insurance company must be accepted.

9. Thus, the appeal is allowed. The finding rejecting the contentions of insurer to above effect as rejected by the Tribunal is set aside. The insurance company is granted recovery rights against the owner and driver

i.e. respondent Nos. 2 and 3. For such purpose, it may take out appropriate proceedings before the tribunal.

10. Statutory amount, if any, shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 18, 2016
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