$~R-97

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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 679/2007**

NATIONAL INSURANCE CO LTD

..... Appellant

Through Mr. Pradeep Gaur and Mr. Amit Gaur, Advs.

versus

VINEET KUMAR CHAUDHARY & ORS

..... Respondent

Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) had instituted accident claim case (petition No.26/07) on 06.02.2001 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) on the ground that, on 10.11.2000, he had suffered injuries in a motor vehicular accident that had occurred due to rash driving of tempo bearing registration No.DL 1 LC 7421 (offending vehicle) by the second respondent Vijay Singh (the driver). In the claim petition, the claimant had impleaded the said driver (Vijay Singh) in addition to the third respondent Lal Babu Singh and National Insurance Co. Ltd. (as respondents), the latter two being the owner and insurer

respectively of the offending vehicle. The tribunal held inquiry and, by judgment dated 09.10.2007, returned a finding that the accident had occurred resulting in injuries being suffered by the claimant due to negligent driving of the offending vehicle by the second respondent Vijay Singh.

2. During the course of inquiry, the insurer had pleaded that there was a breach of terms and conditions of the insurance policy since the driver was not holding a valid or effective driving license. The tribunal's record shows that the copy of the driving license purportedly issued in favour of the said Vijay Singh was submitted in the course of the inquiry by the driver and owner and the same was made available to the insurer after the notice of the proceeding had been served. The insurer led evidence during inquiry by examining J P Aggarwal (senior clerk) of the office of Road Transport Officer (RTO) Agra as R3W1 to prove that the license of which copy (Ex.R3W1/1) had been submitted purporting to have been issued vide No.376/Agra/98 on 02.07.1998 in the name of Vijay Singh was never issued by RTO, Agra. Further, record was produced by the said witness to show that the driving license bearing the said particulars had actually been issued on 27.01.1998 in the name of Ashish Mittal son of R P Mittal and the driving license issued on 02.07.1998 bearing No.4375/Agra had been issued in the name of yet another person Khurshid Ahmad.

3. Though the above evidence, the correctness of which was never challenged, unmistakably proved that the driving license relied upon by the owner and driver of the offending vehicle was a fabricated document, the tribunal rejected the plea of the insurance company on the ground that there

was no reason for the owner to believe that the driving license being produced at the time of engaged as driver was a fake document.

4. Insurance company held liable to pay filed the appeal contending that there was no material before the tribunal to conclude that the driving license, copy of which was submitted in answer to the notice under Order 12 Rule 8 of code of Civil Procedure, 1908 (CPC), had been sent by the driver and believed to be genuine at the time of engaging Vijay Singh driver of the offending vehicle. This submission is correct as neither the driver nor the owner entered the witness box during the inquiry before the tribunal. In fact, after having given a copy of a fake document to the insurer, in answer to its notice under Order 12 Rule 8 CPC, the owner and driver of the offending vehicle did not effectively participate in the proceedings before the tribunal. The evidence of R3W1 noted above was not even challenged.

5. In above facts and circumstances, the tribunal was not correct in assuming that the owner had exercised due diligence by taking a copy of the driving license at the time of engaging the driver Vijay Singh as a driver of the offending vehicle or believing it to be a genuine document.

6. Thus, the appeal is allowed. The insurance company is granted recovery rights against the owner and driver of the offending vehicle i.e., second and third respondents herein. For such purposes, the insurer may take out appropriate proceeding before the tribunal.

7. The amount of compensation that may have been deposited by the insurer in terms of order dated 03.12.2007 shall be released to the claimant.

If there has been a default or shortfall in such deposit, the claimant will be entitled to take out proper proceedings before the tribunal.

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

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 17, 2016
VLD