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

Date of Decision: 18th January, 2016

+ **MAC.APP. 798/2010**

NEW INDIA ASSURANCE COMPANY LTD Appellant
Through Mr. Abhishek K. Gola and Mr. C
K Gola, Adv.

versus

ASHPAL SINGH & ORS Respondents
Through Mr. Anil Hooda and Mr. Ankit
Gupta, Advs. for R-1 and R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In this appeal under 173 of the Motor Vehicles Act, 1988 ("MV Act") the insurance company raises a grievance that the Motor Accident Claims Tribunal ("Tribunal") allowing the claim petition under Section 166 of the MV Act presented by the respondent Nos. 3 to 7 while directing the payment of compensation in the sum of Rs.15,52,940/- in their favour on account of death of Maha Singh Kirar in motor vehicular accident that occurred at 11.40 AM on 12.07.2006 involving tanker bearing registration No.HR 38F 2678 ("the offending vehicle") did not grant recovery rights in its favour, as against the first respondent Ashpal Singh (the registered owner of the offending vehicle).

2. Notices were issued by order dated 26.11.2010 only to the first and second respondent (the owner and driver respectively of the offending vehicle). The said party respondents have appeared in response, through counsel, to contest.

3. Arguments have been heard. Record perused.
4. The material on record clearly shows that the offending vehicle was an oil tanker (10 wheeler) registered in the name of the first respondent. The learned counsel for the appellant refers to Section 14(2) of the MV Act which reads as under :

“14. Currency of licences to drive motor vehicles – (1) ...

X X X

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years,

whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may

be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry.

5. It is clear from bare reading of the proviso under Section 14(2) (9) that in the case of transport vehicles carrying goods which are dangerous or hazardous in nature, the driving license ordinarily issued is not sufficient in that, such driving license requires a further endorsement as to the compliance by the driver with the requirements of the other conditions, such licenses being effective only for a period of one year and subject to renewal for similar period from time to time thereafter.

6. In above context, reference has also been made to rules 9 and 132 of the Central Motor Vehicle Rules, 1989 which, to the extent relevant, read as under :

9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.—

X X X

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

X X X

132. Responsibility of the transporter or owner of goods carriage.—

X X X

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

X X X

7. It emerges from the pleadings before the Tribunal, and the evidence adduced during inquiry into the claim petition before it, that the offending vehicle was one which would fall in the category of a transport vehicle meant to carry dangerous or hazardous substances. In these circumstances, the driving licence of the driver deputed to drive such vehicle could not be the one ordinarily issued for purposes of a heavy transport vehicle, as appears to be the case pleaded by the driver and owner of the offending vehicle in the matter at hand. Noticeably, the accident information report (page 46 of the paper book) shows that the driving license issued in favour of the driver (the second respondent) in this case was claimed to be one valid for the period 18.06.2004 to 17.06.2007. There is no material made available to show that the driver had secured the authorisation necessary in terms of Section 14(2) of MV Act, read with rule 9 of Central Motor Vehicle Rules, 1989. The rules as noted above, do not permit such validity in case the driver is to be on duty on a vehicle carrying dangerous or hazardous substances.

8. The insurance company had denied liability to pay compensation in the case at hand referring to the aforementioned deficiency in the driving licence of the second respondent. The contention of the insurance company (the appellant) was rejected by the Tribunal through the following observations :

“24. R3 has not examined the investigator. No official of the Licensing Authority Mathura has been examined to prove the report ExR3W1/F. No notice u/o 12 Rule 8 CPC had been issued to R2. The petition had been filed on 5/8/2006. WS dtd 13/10/2006 on behalf of R3 was filed on 21/2/2007. The issues were framed on 3/4/2007. The matter was not settled by R3 because of the fact that R1 was not having valid DL. This fact was disclosed to the court by ld. Counsel for R3, on 16/5/2007. Thus, R3 was required to bring on record the registration certificate of the vehicle. It (R3) was also required to examine the investigator and official of the Licensing Authority. In the absence of evidence, the mechanical inspection report of the offending vehicle referred to by counsel for R3 is not being taken into account.

25. Admittedly the offending vehicle was being driven by R1. It was owned by R2 and was insured with R3. Therefore, R1, is the principal tort feaser. R2 and R3 are vicariously liable. All the respondents are held jointly and severally liable to pay the awarded amount. However, since the vehicle was insured with R3, therefore, it shall pay the awarded amount.”

9. It appears the Tribunal has fallen into error by calling for negative evidence. The insurance company had pleaded that it was not liable because the driver did not have a valid endorsement in terms of the requirements of Section 14 of MV Act read with rules 9 and 132 of Central Motor Vehicle Rules, 1989. It was the burden of the owner and driver respectively of the offending vehicle, in the facts and circumstances of the case, to prove by positive evidence that the driving license of the second respondent was one carrying the necessary authorisation.

10. On being asked, learned counsel for the first and second respondent (owner and driver respectively) fairly concedes that the

driving license carried by the driver of the offending vehicle did not have the necessary authorisation in terms of proviso to Section 14(2) of the MV Act read with rule 9 (3) and rule 132 (5) of the Central Motor Vehicles Rules, 1989 quoted above.

11. In these circumstances, the driving license on which the said party respondents have been relying cannot be accepted as a valid license for purpose of the offending vehicle. Thus, there has been breach of provisions of insurance policy. The Insurance company (the appellant) has already paid the amount to the claimant in terms of impugned judgment-award. It is entitled to recover it from the registered owner (the first respondent) of the offending vehicle.

12. The first respondent is, thus, directed to pay the amount of money earlier paid to the claimant in terms of the impugned award within 30 days hereof failing which the appellant shall be entitled to recover it with interest @ 9% per annum from the date of payment by the insurer till realization by taking out necessary execution proceedings before the tribunal.

13. The appeal stands disposed of with the above directions/observations.

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

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

JANUARY 18, 2016
VLD/nk