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

Date of Decision: December 05, 2016

- (i) + MAC.APP. 1287/2012 & C.M.No.21001/2012
(ii) + MAC.APP. 341/2013
(iii) + MAC.APP. 60/2014

ICICI INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advocates

versus

- (i) MAHENDER SINGH AND ORS
(ii) MAHENDER SINGH AND ORS
(iii) MANOJWATI AND ORS

.....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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In the above-captioned three appeals, the challenge is to the common impugned Award of 8th May, 2012 vide which compensation has been granted to respondents-claimants while saddling appellant with the liability to pay the awarded compensation.

In these appeals, recovery rights are sought qua driver and owner of the offending vehicle in question. The facts are not in dispute and so, needs no recapitulation. Suffice to note that in the unfortunate road accident on 10th June, 2007, respondents-claimants/couple had sustained

injuries and their minor child had died.

In these appeals, respondents-owner and driver of the offending vehicle in question have been served, but despite service, neither the owner nor the driver of the offending vehicle in question has chosen to appear and accordingly, there are set *ex parte*.

It is pertinent to note that even before the learned Tribunal, respondents-owner and driver of the offending vehicle in question had not appeared and they were proceeded *ex parte*.

Learned counsel for appellant-insurer submits that the grounds of challenge in these appeals are identical and so, these appeals can be heard together. Accordingly, these appeals have been heard together and are being disposed of by this common judgment while treating MAC. APP.341/2013 as the lead matter.

Learned counsel for appellant submits that there was no response to Notice under Order 12 Rule 8 of CPC by the owner/driver of the offending vehicle in question and they had not appeared either before the learned Tribunal nor this Court and so, reliance upon decision in *Lal Chand v. Oriental Insurance Co. Ltd.*, (2006) 7 SCC 318 and *National Insurance Co. Ltd. v. Swaran Singh and Others*, 2004 ACJ 1 are of no avail and the learned Tribunal has erred in relying upon these decisions to deny recovery rights to appellant. Nothing else is urged on behalf of appellant.

Upon hearing and on perusal of impugned Award, evidence on record and the decisions in *Lal Chand (supra)* and *Swaran Singh (supra)*, I find that the question of willful default can be examined once the

owner/driver of the offending vehicle in question appears and contests before learned Tribunal. Pertinently, there was no response by the owner/driver of the offending vehicle in question to Notice under Order 12 Rule 8 of CPC.

In the absence of owner/driver of the offending vehicle in question, learned Tribunal was not justified in putting the onus on appellant to have examined the witness from the transport authority to prove that the driving licence issued to the driver of the offending vehicle in question was fake. Such a view is being taken in view of the fact that original form-54 issued by the concerned licencing authority is on record, which clearly indicates that the copy of the driving licence relied upon was not issued by the said licensing authority. So, it becomes evident that the driving licence marked as 'X' on record is fake one. Whether the owner of the offending vehicle was aware about it, can be only considered had the owner of the offending vehicle in question appeared before the learned Tribunal.

Supreme Court in *Kusum Lata and Others Vs. Satbir And Others* (2011) 3 SCC 646 has reiterated that such like cases has to be decided on preponderance of probability. A Coordinate Bench of this Court in *National Insurance Company Limited Vs. Smt. Pushpa Rana & ors.* 2009 ACJ 287 has reiterated that proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence, strict rules of evidence are not required to be followed. So, strict proof is not required in cases like instant one, particularly when the original record is available and when the concerned owner/driver is not coming forward to dispute it.

In the above background, learned Tribunal was not justified in denying the recovery rights to appellant on the premises that no notice was sent to the concerned licencing authority to produce the record.

The finding on this aspect is set aside and these appeals are allowed to the extent of granting the recovery rights to appellant qua the owner of the offending vehicle in question.

While modifying the impugned Award to the aforesaid extent, these appeals and the application are accordingly disposed of.

The statutory deposit made by appellant-insurer be refunded to appellant.

(SUNIL GAUR)
JUDGE

DECEMBER 05, 2016

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