

\$~19

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

Date of Decision: 21st April, 2016

+ **MAC.APP. 973/2014**

RITU SHARMA & ORS. Appellants

Through: Mr. M.K. Sharma, Adv.

versus

MOHD. DABLU & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants had filed an accident claim case on 23.08.2011, registered as suit No. 762/2011 under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation on account of death of Nikhil Sharma in a motor vehicular accident that statedly occurred at about 9 p.m. on 24.07.2011 in front of A-4, Plot No. 136 Chemical Pvt. Ltd., Tronica City, Loni Ghaziabad wherein truck No. WB-11 A 9948 (offending vehicle), driven by the first respondent, had hit the motorcycle driven by the deceased. In the accident claim case, besides the first respondent (driver of the offending vehicle) and the second respondent (the person stated to be the registered owner of the offending vehicle) were impleaded as parties, in addition to National Insurance Company Ltd (insurer), the latter on the plea that the offending vehicle was insured with it against third party risk. The proceedings before the tribunal were suffered by the driver and owner of the

offending vehicle *ex-parte*. The insurance company contested on the ground that the document on the basis of which it was being claimed that the vehicle was insured is forged and fabricated.

2. The insurance company led evidence by examining U.C. Roy (R3W1), the Branch Manager to prove the above-said contentions and also the fact that it had issued notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) to the owner of the offending vehicle calling him upon to produce the original policy to which there had been no response.

3. The tribunal held that the document relied upon by the claimant was a forged one. Therefore, the insurance company was exonerated. With findings returned accepting the case of the claimants about accident having been caused due to rash driving of vehicle, compensation was awarded and the liability was fastened on the owner alone.

4. By the appeal at hand, the claimants submit that the insurance company should have been directed to satisfy the award but may have been granted recovery rights. Reliance is placed on *New India Assurance Co. Ltd. vs. Kishan Siingh Chauhan & Ors.* 2014 (3) TAC 482 (Del.). It is also the submission of the claimant that there is no reason why the liability was not fastened on the first respondent, the driver of the truck even though sufficient evidence had been led to prove that he was at the wheel of the said vehicle at the time of collision and the accident had occurred due to his negligence.

5. While there is substance in the above-noted second contention of the appellants, the first plea about liability being fastened against the insurance company cannot be accepted for the simple reason that the claimants conceded through counsel that there is no evidence whatsoever in their

possession that the document relied upon was a genuine document due to which the insurance company may be obliged to cover third party risk in respect of the offending vehicle. In the face of clear proof that the document was a forged one, there being no other evidence to prove any privity of contract between the registered owner of the offending vehicle and the insurance company, there is no justification for it to be called upon to bear the burden which it had never undertaken.

6. The judgment of the tribunal is conspicuously silent as to why the first respondent was not held liable. As mentioned above, inspite of notice, he had chosen to suffer the proceedings before the tribunal *ex-parte*. The claimants had led evidence by examining Kuldeep Singh (PW-2), an eye witness, *inter alia*, to the occurrence. His testimony with the record of the corresponding criminal case clearly reveal that the accident had been caused due to negligence on the part of the first respondent. Therefore, being the principal tort-feasor, he is also held liable to pay the compensation jointly and severally with the owner (second respondent).

7. The award is modified accordingly.

8. The appeal is partly allowed with above directions.

R.K. GAUBA
(JUDGE)

APRIL 21, 2016/nk