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

Date of Decision: 16th February, 2016

+ **MAC APP. 1149/2013**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

INDER PAL & ORS Respondents

Through: Mr. Arbind Kr. Patel, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In the claim for compensation on behalf of the first and second respondent arising out of a detailed accident report (DAR) submitted by the SHO P.S. Fatehpur Beri in the context of first information report (FIR) no. 187/2012 registered in the police station on 22.07.2012 for offences punishable under Section 279/338/465/471 of Indian Penal Code, 1860 (IPC), the appellant/insurance company though admitting the insurance cover in respect of the offending vehicle (Tavera car bearing registration no.HR-55HT-3617) against third party risk pleaded that it should not be fastened with the liability since the driver of the offending vehicle was not holding a valid driving license. This contention was declined and the insurance company was called upon to pay the compensation as determined by the tribunal by judgment dated 18.09.2013.

2. By the appeal at hand, the insurance company has re-agitated the issue and submits that it should have, in the minimum, been granted recovery rights in the aforementioned facts and circumstances.

3. The issue has been dealt with by the tribunal in the impugned judgment, *inter-alia*, through the following observations:-

“R3W1 has stated that the driving licence of the respondent no 1 was verified by the IO from issuing authority, Agra as per which, the said licence was not issued from the Authority in the name of Rajnish Kumar. He proved the verification report as Ex. R3W1/C. He stated that respondent no.1 was also challaned under section 465 and 471 IPG apart from 279/337/338.

RW2 has stated that at the time of employing the driver Rajnish, he had checked his driving licence which seemed to be genuine. He had also taken his driving skill test which he found to be satisfactory and convincing. He stated that driver Rajnish had worked for a period of one year and drove his vehicle satisfactory. On being cross-examined, he denied that he knew that the driver had a fake licence and despite knowledge he had employed him on the vehicle. He stated that he has enough experience and from that experience, he can judge the competency of the person to drive the vehicle.”

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In the present case also the respondent no.2 had checked the license and driving skills before appointing him as a driver on the vehicle in question. After satisfying himself that the respondent no.1 had a license and was driving competently he engaged him on the offending vehicle for one year. He did not observe any time prior to the aforesaid incident that he drove the offending vehicle negligently or did not exercise reasonable care. I am of the view that the respondent no.2 fulfilled the conditions of the policy regarding use of the vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant point of time. I am of the view that the respondent no. 3 cannot be absolved of its liability to compensate the

petitioners and no liability can be fastened on the respondent no.2, the insured since at the time of accident, the policy was valid.”

4. Having heard the learned counsel for the appellant, it is found that the appeal is devoid of substance. The issue has been appropriately considered and determined by the tribunal. Since the evidence that he had duly tested the capability of the driver to be engaged on the offending vehicle itself indicates that there was no diligence on his part, there is no fundamental breach of the terms and conditions of the policy by the person insured. Thus, the contentions of the insurance company must be rejected (*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297).

5. The appeal is dismissed.

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

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

FEBRUARY 16, 2016

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