

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

Date of decision: December 07, 2016

+ **MAC.APP. 802/2016**

+ **MAC.APP. 803/2016**

SIKANDER SINGH

.... Appellant

Through: Mr. Sudhir Batra & Mr.Rohit
Khawana, Advocates

versus

FUTURE GENERAL INDIA INSURANCE CO LTD & ANR.

..... Respondents

Through: Mr. Rajeev M. Roy, Advocate

+ **MAC.APP. 861/2016**

+ **MAC.APP.865/2016**

BANKE LAL

..... Appellant

Through: Mr. Sudhir Batra & Mr.Rohit
Khawana, Advocates

versus

FUTURE GENERAL INDIA INSURANCE CO LTD & ANR.

..... Respondents

Through: Mr. Rajeev M. Roy, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

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C.M.37033/2016 in MAC.APP. 802/2016
C.M.370363/2016 in MAC.APP. 803/2016
C.M.38752/2016 in MAC.APP. 861/2016
C.M.38802/2016 in MAC.APP.865/2016

The delay in filing the accompanying appeal in the above captioned first and second appeal [MAC.APP. 802/2016 & MAC.APP. 803/2016] is of 152 days. The delay in filing the above captioned third and forth appeal [MAC.APP.861/2016 & MAC.APP.865/2016] is of 162 days.

Learned counsel for appellants submits that no relief is claimed against respondent No.2 in these appeals. Hence, issuance of notice to respondent No.2 is dispensed with.

Mr. Rajeev M. Roy, Advocate, accepts notice of these applications on behalf of respondent No.1.

Upon hearing, I find that the averments made in paragraphs No. 3 to 5 of these applications provide sufficient cause to condone the delay occasioned. The applications are allowed and delay is condoned.

The above captioned four applications are disposed of.

C.M. 38754/2016 (u/S 151 CPC) in MAC.APP. 861/2016
C.M. 38804/2016 (u/S 151 CPC) in MAC.APP. 865/2016

Allowed subject to all just exceptions.

C.M. 38753/2016 (u/S 107(d) r/w Sec.151 CPC) in MAC.APP. 861/2016

By way of this application, applicant-*Banke Lal* intends to place on record his driving license issued by Government of Nagaland as additional evidence.

Learned counsel for appellant submits that no relief is claimed against respondent No.2 in this appeal. Hence, issuance of notice of this application to respondent No.2 is dispensed with.

Mr. Rajeev M. Roy, Advocate, accepts notice of these applications on behalf of respondent No.1.

Upon hearing, I find that the additional evidence sought to be led now was not available before the learned Motor Accident Claims Tribunal and in view of averments made in paragraphs No.2 to 5 of this application, it is necessary to be considered in this appeal and so, license issued by Government of Nagaland is admitted in evidence as Exhibit 'X' (original seen & returned).

Application is disposed of.

C.M. 38803/2016 (for taking addl. Evidence) in MAC.APP. 865/2016

In view of orders passed in C.M. 38753/2016 in MAC.APP. 861/2016, this application has become infructuous.

MAC.APP. 802/2016 & C.M. 37032/2016 (for stay)
MAC.APP. 803/2016 & C.M. 37035/2016 (for stay)
MAC.APP. 861/2016 & C.M. 38751/2016 (for stay)
MAC.APP.865/2016 & C.M. 38801/2016 (for stay)

1. The above captioned four appeals arise out of one vehicular accident. The appellant in the above captioned first two appeals is the owner of the delivery van in question whereas appellant in the above captioned third and fourth appeal is the driver of the above-said delivery

van.

2. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being disposed of by this common judgment.

3. The impugned Award of 29th January, 2016 grants compensation of ₹11,10,043/- with interest to injured- *Kuldeep Singh* and compensation of ₹3,28,584/- with interest to injured- *Manoj*. Impugned Award grants recovery rights to respondent-insurer against appellants herein.

4. The factual position, as noted in the impugned Award, is as under:-

“Brief facts of the present case of the petitioners are that on 09/08/2013, the petitioner (in the first petition) as a pillion rider and petitioner (in the second petition) were travelling on motorcycle bearing registration NO.DL:-6S-AD-7764 which was being driven by petitioner in (the second petition). It is further alleged that at about 11.30 p.m. when they reached at Metro Pillar No. 162, Main Rohtak Road, Punjabi Bagh, Delhi, a vehicle Mahindra Champion bearing its registration No.DL-1LQ-0022, which was being driven by its driver/respondent No.1 in rash and negligent manner hit the aforesaid motor cycle of the petitioners. Resultantly, they both had sustained injuries. In total, both the petitioners have claimed ₹25 Lacs each as compensation.”

5. On the basis of evidence led by the parties, learned Motor Accident

Claims Tribunal vide impugned Award has granted compensation as noted above.

6. The challenge to the impugned Award by learned counsel for appellants- owner and driver of the offending vehicle is on the ground that the motor cycle driven by injured- *Kuldeep Singh* with injured- *Manoj*, the pillion rider, had struck against the stationery delivery van of appellant-*Banke Lal* and so, no negligence can be attributed to appellants herein. Learned counsel for appellants also submits that decision in *National Insurance Company Limited Vs. Kusum Rai and Ors.* 2006 ACJ 1336 has no application to the facts of the instant case because the driving license issued by Government of Nagaland, which is now exhibited 'X', clearly shows that appellant *Banke Lal* was holding the driving license for light motor vehicle as well as for transport vehicle and thus, grant of recovery rights to respondent-insurer qua appellants is unwarranted, as the stationery delivery van in question was insured and so, liability to pay the compensation is of respondent-insurer and not of appellants.

7. Learned counsel for respondent- *Future General India Insurance Co. Ltd.* supports the impugned Award and submits that the stand taken by appellant –*Sikandar Singh* in the above captioned first two appeals is that he had ceased to be the partner of M/S Dixit Roadlines and that appellant- *Banke Lal* was not his employee and so, the above captioned two appeals filed by appellant- *Sikandar Singh* are not maintainable. It is next contended that as per Section 6 of *The Motor Vehicles Act, 1988*, a driver can hold only one driving license and in the instant case, appellant-

Banke Lal was holding driving license issued by Government of Punjab, which he had surrendered before the police and now he has relied upon the driving license issued by Government of Nagaland, which is impermissible in view of mandate of aforesaid provision of the law. Thus, it is submitted that learned Motor Accident Claims Tribunal has rightly held that appellant- *Banke Lal* was not holding a valid driving license and so, recovery rights have been rightly granted to respondent-insurer.

8. Upon hearing and on perusal of the impugned award, evidence on record and the decision cited, I find that there is no documentary proof on record to show that appellant- *Sikandar Singh* had ceased to be member of M/S Dixit Roadlines and so, it is held that he continues to be the partner of M/S Dixit Roadlines. As a consequence thereof, appellant- *Banke Lal* also continues to be driver of M/S Dixit Roadlines and appellant- *Sikandar Singh* cannot get away by simply asserting that appellant- *Banke Lal* was not his driver. The evidence on record belies appellant's plea of negligence being attributable to injured-*Kuldeep Singh* and not appellant-*Banke Lal*.

9. It is true that as per Section 6 of *Motor Vehicles Act, 1988*, a driver can hold one driving license at a time. A perusal of the verified driving license *EX.RW1/1* of appellant- *Banke Lal* issued by Government of Punjab reveals that this driving license was issued on 11th April, 2011 and was for light motor vehicle. The driving license Ex. 'X' issued by Government of Nagaland to appellant- *Banke Lal* reveals that this license

was valid for driving transport vehicle from 17th August, 2011 and the accident in question took place on 9th August, 2013 and so, it has to be taken that on the date of the accident, appellant was holding a valid driving license for driving transport vehicle, which includes the delivery van in question.

10. As regards violation of Section 6 of *The Motor Vehicles Act, 1988* is concerned, I find that appellant- *Banke Lal* was holding two driving licenses on the date of the accident. The license issued to him by the Government of Punjab for driving light motor vehicle was valid on the date of the accident and the license issued to him by Government of Nagaland on 3rd October, 2016 was valid for driving light motor vehicle as well as transport vehicle on the date of the accident.

11. During the course of the hearing, it was clarified by learned counsel for appellant- *Banke Lal* that the date of issue in driving license (*Ex.-X*) by Government of Nagaland, is of renewed driving license. Although appellant- *Banke Lal* is liable to be prosecuted for violation of Section 6 of *The Motor Vehicles Act, 1988* for holding two driving licenses but on this ground, liability to pay compensation cannot be shifted upon driver or owner of the offending vehicle as evidence of wilful default is lacking.

12. In view of the aforesaid, the impugned Award is modified to the extent of denying recovery rights to respondent-insurer. However, Appellant- *Banke Lal* is liable to be prosecuted for violation of Section 6 of *The Motor Vehicles Act, 1988*. These appeals and applications are

partly allowed to the extent indicated above and are accordingly disposed of.

13. The statutory deposit, if any, be refunded as per rules.

(SUNIL GAUR)
JUDGE

DECEMBER 07, 2016

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