

\$~R-180

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

Decided on: 11th September, 2017

+ MAC.APP. 105/2010

ORIENTAL INSURANCE COMPANY LIMITED

.... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

BRIJ NANDAN PANDIT & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Naval Kishore, a bachelor, then aged 26 years old, was driving truck bearing registration No.HR-38J-0744, on 24.05.2006 on the Bombay-Nagpur-Highway when it came to be involved in a collision against another truck bearing registration No.CG-04G-3863, admittedly insured against third party risk for the period in question with the appellant insurance company (insurer), the accident resulting in death of Naval Kishore, which became the subject matter of the investigation of the FIR No.59/2006 for offences punishable under Sections 304-A/334/279/338/400/184 of Indian Penal Code, 1806 (IPC) registered with Police Station Muktai Nagar, District Jalgaon, Maharashtra. Noticeably, the third respondent herein was the driver of the said truck, it being registered in the name of the fourth respondent,

at whose instance the appellant insurance company had issued the insurance policy.

2. The parents of the deceased Naval Kishore, they being first and second respondents (collectively, the claimants) had instituted accident claim case (Suit No.449/06) on 17.08.2006. The tribunal held inquiry and on the basis of evidence led, by judgment dated 22.10.2009, found the third and fourth respondents herein to be jointly and severally liable, they being the principal tortfeasor and the person vicariously liable respectively.

3. The tribunal awarded compensation in the sum of Rs.3,05,216/-, fastening the liability on the appellant to indemnify and pay with interest to the claimants.

4. The insurer, by the appeal at hand, has questioned the judgment of the tribunal and submits that in absence of an eye witness, the findings on the issue of negligence could not have been returned. It is also the contention of the insurer that on the basis of evidence led by it through two witnesses Ashok Sharma (R3W1) and Rathindre Mohan Goswami (R3W2), the tribunal should have held that there was breach of terms and conditions of the insurance policy and exonerated the insurer. The prime ground urged in this regard is that the driving licence which was valid for the period 21.10.2005 to 20.10.2008 was a licence that had been renewed on the basis of document previously presented to the transport authority as a licence earlier issued which, however, upon verification, was found to be fake.

5. It is not correct on the part of the insurer to contend that if there is no eye witness available, an accident claim case cannot be maintained. The involvement of the offending vehicle or the negligence on the part of its driver can be brought home even in absence of the eye witness account. The principle of *res ipsa loquitor* can be invoked to show from the facts and circumstances which are proved by other material on record the involvement of the vehicle or negligence on the part of its driver. This is precisely what has been the basis of the findings, returned in the present case which consequently do not call for any interference.

6. The other issue is covered by a number of judgments of this court in similar fact situation including the one passed in *M/S The New India Assurance Company Limited versus Zakir Hussain & Anr*, CM(M) 1104/2013, decided on 12th July, 2017, the observations in paras 3 and 4 being of import are extracted as under:-

“3. It appears that from the evidence led during the inquiry it was brought out that the driving license had been obtained by the first respondent on the basis of a document which was fake. The said driving license which had been obtained, however, had been renewed from time to time, the renewal and validity having been confirmed by the licensing authority. The obtaining of license on the basis of fake document was an act which would be illegal and also an offence punishable in law. But then, there is no evidence brought on record that the registered owner (insured) was privy to such dishonest act on the part of the first respondent. Fact remains that the transport authority through its official confirmed before the tribunal in the inquiry that the driving license for the period in question was valid and effective.

4. *Having regard to the law laid down by the Supreme Court in National Insurance Co. Ltd. vs. Swaran Singh & Ors.(2004) 3 SCC 297, the plea of the insurance company cannot be accepted.”*

7. For the foregoing reasons, the appeal is found devoid of substance and is dismissed.

8. By order dated 23.02.2010, the insurance company had been directed to deposit the entire awarded amount with upto date interest. By subsequent order dated 07.09.2015, fifty per cent (50%) of the awarded amount was released to the first respondent. The balance shall now be released in terms of the impugned judgment.

9. The statutory amount shall be refunded to the appellant insurance company.

10. The appeal stands disposed of in above terms.

SEPTEMBER 11, 2017

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R.K.GAUBA, J.