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

Decided on: 26th October, 2017

+ **MAC APPEAL No. 158/2012**

BRIJESH KUMAR PANDEY & ANR. Appellants

Through: Mr. Rajeev K. Garg, Mr.
Rajeev Kapoor, Mr. Govind
Singh & Mr. Harsh Nagar,
Advs.

versus

ALKA AGGARWAL & ORS. Respondents

Through: Mr. Shoumik Mazumdar, Adv.
for R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 18.10.2007, a motor vehicular accident took place involving truck bearing registration no. HR 38 H 0517 (the truck) in the area of Morna Chowk, Noida, Uttar Pradesh. The second appellant admittedly is the registered owner of the truck and the said vehicle was admittedly driven by the first appellant engaged by the former on the relevant date and time. The accident resulted in death of Anil Aggarwal, giving rise to cause of action to seek compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 in favour of his wife and other members of the family dependent on him, they including the first to fourth respondents (collectively, the claimants),

Dropati Devi (mother of the deceased) also being amongst the claimants, she having died during the pendency of the proceedings before the Tribunal.

2. The appellants herein had due notice of the claim case and appeared to resist the same by filing a written statement denying involvement of the truck in the accident or negligence on the part of the first appellant. The third respondent in the claim case (now fifth respondent in the appeal) is the National Insurance Company Ltd. (insurer) which had concededly issued an insurance cover against third party risk in respect of the truck for the period in question. In response to the notice issued by the Tribunal, it also appeared and resisted the claim case as also the liability to indemnify by filing written statement taking up the defence, *inter alia*, of breach of terms and conditions of the insurance policy on account of there being no valid or effective driving licence held by the first appellant (the driver).

3. The Tribunal held inquiry and, by judgment dated 31.10.2011, accepted the case of the claimants that the death had occurred due to negligent driving of the truck by the first appellant. It awarded compensation in the total sum of Rs. 10,86,000/- and directed the insurer to bear the burden in terms of the indemnity clause under the insurance policy levying interest thereupon, accepting its plea about the breach on account of driving licence and thus, granting recovery rights to it against the appellants.

4. The record of the Tribunal would show that in the course of inquiry, the first appellant had appeared as a witness (RW1), on the strength of his affidavit (Ex.RW1/A). It came out through his testimony that he was holding two documents purporting to be driving licences one (Ex.RW1/R3/2) of which had been seized by the police during the investigation into the corresponding criminal case and the other being (Ex.RW1/R3/1) produced before the tribunal. It appears the insurer made a probe into the genuineness of the licence that had been seized by the police and finding the facts to the contrary, brought on record evidence through Balwan Singh (R3W1), its Administrative Officer, proving, *inter alia*, verification report (Ex.R3W1/3) indicating that the said document was not genuine.

5. The second appellant (the registered owner of the vehicle) showed no interest in the inquiry into the issue and led no evidence before the Tribunal. The first appellant (the driver) during the course of his evidence also made no effort to prove the genuineness of the other document before the tribunal.

6. It is against the above backdrop that the Tribunal concluded that the appellants were not able to show that the driver (first appellant) was holding any valid or effective driving licence and consequently held that there was a breach of terms and conditions of the insurance policy proceeding to grant recovery rights.

7. The appellants have challenged the above-mentioned conclusions and the directions for recovery rights by the appeal at hand submitting therewith an application (CM No. 4010/2014)

seeking opportunity to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC). The said application was considered by a learned single judge of this Court but dismissed by order dated 21.08.2014. With that result of the application, the learned single judge proceeded to conclude that there was no evidence to show that the driving licence (Ex.RW1/R3/1) was a genuine driving licence and consequently dismissed the appeal.

8. The appellants filed Special Leave Petition (civil) no. 32699/2014 before the Supreme Court of India where, upon leave being granted, it was treated as Civil Appeal No. 1948/2015. By order dated 13th February, 2015, the Supreme Court set aside the order dated 21.08.2014 of the learned single judge of this Court and remitted the matter to this Court for re-consideration permitting the appellants to produce the driving licence and the verification report to demonstrate that the driver incharge of the vehicle on the date of accident had a proper driving licence.

9. Pursuant to the aforesaid decision of the Supreme Court in Civil Appeal No. 1948/2015, the proceedings in the appeal at hand stood revived before this Court. In the course of subsequent proceedings, the appellants availed of the opportunity to lead additional evidence under Order 41 Rule 27 CPC and examined Chander Shekhar Kappor (AW-1), Brijesh Kumar Pandey (AW-2) and Rakesh Kumar (AW-3) as witnesses. Pertinent to add here that AW-1 is the proprietor of the second appellant, *i.e.* the registered owner of the vehicle, while AW-2 is the first appellant *i.e.* the driver of the vehicle in question on the

relevant date and time, the last witness AW-3 being an official from the office of Regional Transport Officer, Jaunpur, Uttar Pradesh.

10. The evidence of AW-3, in particular, proves beyond any doubts that the first appellant did hold a valid and effective driving licence which had been initially issued on 08.07.2003 for a light motor vehicle, later endorsed on 29.03.2006 permitting him to drive a heavy transport vehicle, its validity being for and upto 28.11.2008.

11. Against the above backdrop, the insurer now does not dispute that the driver, *i.e.* the first appellant, did hold a valid and effective driving licence on the date of the accident. It may be mentioned here that AW-1, proprietor of the entity which owns the vehicle in question seeks to claim that he had the original driving licence and, therefore, had engaged the driver believing that there was no violation of law.

12. While against the above backdrop of facts, the finding returned by the Tribunal on the issue of breach of terms and conditions of the insurance policy will have to be set aside, it cannot be ignored that because of neglect on the part of the appellants in rendering effective assistance to the Tribunal at the time of inquiry into the claim case, a lot of confusion has prevailed. Had proper evidence been adduced about the existence of a valid or effective driving licence at the stage of inquiry especially by the second appellant, the registered owner of the vehicle, such prolonged proceedings could have been avoided. Since this undoubtedly resulted in a heavier burden being cast on the insurance company, particularly on account of element of interest that

would have accrued, the appellants cannot get away without any responsibility to bear.

13. It is noted that the claimants had concluded their evidence before the Tribunal on 06.05.2010. The proceedings thereafter continued before the Tribunal only for purposes of enabling the other parties to lead evidence on the defence raised by the insurance company. The insurance company incurred costs by leading evidence. All this while, the second appellant remained a mute spectator. Had he properly assisted, much of the exercise undertaken by the insurance company could have been avoided. In these circumstances, the liability towards interest on the principal amount of compensation for the period 06.05.2010 onwards till 13.02.2012 i.e. when the appeal was filed ought to be borne by the appellants. They are held liable to do so jointly and severally.

14. The appellants are, thus, directed to pay the requisite amount to the insurance company (fifth respondent) within thirty days. In case of default, the insurance company will have the liberty to take out appropriate proceedings before the Tribunal for its recovery.

15. The statutory deposit shall be refunded to the appellants only after proof of the above-mentioned direction having been satisfied, being furnished.

R.K.GAUBA, J.

OCTOBER 26, 2017

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