

\$~14

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

Decided on: 16th November, 2017

+ **MAC.APP. 238/2013 and CM 40004/2017**

BE-AR SALES

..... Appellant

Through: Mr. S.N. Parashar and Ms. Pankaj
Kumari, Advocates

versus

VIMAL DEVI & ORS.

..... Respondents

Through: Mr. A.K. Soni and Mr. Pavan
Kumar, Advocates for R-7

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is admittedly the registered owner of a motor vehicle described as a tanker bearing registration no.DL-1GB-5039 (tanker) meant for carrying petroleum, which was involved in a motor vehicular accident that occurred on 20.11.2007 resulting in death of Ram Bishun Ram, giving rise to cause of action for instituting accident claim case (suit no.650/2008) on 16.04.2008 by the first to fourth respondents who also prosecuted it for and on behalf of the parents of the deceased, they being fifth and sixth respondents (all of them collectively, the claimants). The tanker was admittedly driven at the relevant point of time by the eighth respondent (driver) and insured against third party risk for the period in question with the

seventh respondent (insurer). The driver (eighth respondent) and the owner (appellant) had due notice of the claim proceedings and in response to the notices issued, appeared before the Motor Accident Claims Tribunal (Tribunal) and filed a joint written statement, *inter alia*, denying negligence on their part and also asserting that the driver held a valid driving licence at the relevant point of time. Midway the inquiry, however, the said parties including the appellant chose to suffer the inquiry *ex-parte*.

2. The insurer, while contesting the claim case and denying the liability to indemnify, took up the plea that there was a breach of the terms and conditions of the insurance policy since the driver held a licence which did not bear the requisite endorsement for purposes of vehicle carrying hazardous goods in terms, *inter alia*, of Sections 4, 9, 10 & 14 of the Motor Vehicles Act, 1988 and Rules 9 and 32 of the Central Motor Vehicles Act, 1989. It led evidence by examining Sanjay Diwan (R3W1), Assistant Secretary, State Transport Authority for the Govt. of NCT of Delhi and Anushree Dutt, Executive Legal, also referred as R3W1. By the said evidence, the insurer brought on record not only the factum of there being no endorsement on the driving licence for purposes of vehicle meant to carry hazardous goods but also proved that in spite of notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC), the driver or owner had failed to respond or produce any such endorsement. The evidence of both the witnesses examined by the insurer went unchallenged and unimpeached and there being no evidence led by the appellant or the driver to the contrary, the tribunal accepted the plea of the breach of

the terms and conditions of the policy and granted recovery rights in favour of the insurer against the appellant.

3. The appeal at hand is pressed to challenge the grant of recovery rights, one of the contentions being that the driver had undertaken the requisite training for driving a vehicle meant for hazardous goods in which light the tribunal should not have granted recovery rights. The application (CM 40004/2017) has been moved with the appeal seeking opportunity to lead additional evidence under Order XLI Rule 27 CPC.

4. It is clear from the submissions made, and it is fairly conceded by the counsel for the appellant, that there was gross neglect in the prosecution of the defence by the appellant during inquiry before the tribunal. Had proper assistance been adduced, such protracted inquiry into the issue of valid licence could have been avoided. Needless to add, the lack of assistance by the appellant at the proper stage, would have added to the burden on the insurance company on account of the levy of interest over and above the compensation awarded in favour of the claimants.

5. In the foregoing fact-situation, the appropriate course is for the limited issue of breach of the terms and conditions of the policy to be remitted to the tribunal for fresh determination, this after affording another opportunity to the appellant to show facts to the contrary by requisite evidence. The impugned judgment is set aside and the matter restricted for such limited inquiry is remitted to the tribunal with costs of Rs.50,000/- to be paid by the appellant to the insurance company. Needless to add, the right to proceed further in the inquiry hereby

remitted before the tribunal shall be subject to payment of costs. The tribunal shall call upon the appellant to adduce evidence relevant to the issue and thereafter give similar opportunity to the insurance company to prove facts to the contrary. The insurance company for such purposes may rely on the evidence already adduced before the tribunal.

6. By order dated 12.03.2013, the appellant had been directed to deposit Rs.25,00,000/- with the Registrar General which was ordered to be kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch initially for a period of six months to be renewed periodically. The necessary direction with regard to the amount thus deposited and the interest accrued thereupon shall be given by the tribunal in the light of its findings in the inquiry hereby remitted.

7. The statutory amount shall also be held back presently, suitable orders for its refund or otherwise to be given by the tribunal on conclusion of the further inquiry.

8. The parties to appear before the tribunal on 18.12.2017.

9. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017

yg