

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

Date of decision: March 22, 2017

+ **MAC.APP. 253/2008**

M/S. NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. D.K. Sharma, Advocate

versus

PANKAJ KUMAR & ANOTHER Respondent
Through: Nemo

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
ORAL**

%

Vide impugned Award of 16th February, 2008, Motor Accident Claims Tribunal, Delhi (*hereinafter referred to as 'Tribunal'*) has granted compensation of ₹2,32,500/- with interest @ 7.5% *per annum* on account of injuries sustained by first respondent-*Pankaj Kumar* herein in a road accident on 19th June, 2005.

The facts already noticed in the impugned Award need no reproduction. Suffice to note that apart from the evidence of Injured, there is deposition of *B.D.Aggarwal (R2W1)*, an authorized officer of appellant-Insurer, who has proved on record the Report (*Mark 'A'*) of the concerned Licensing Authority to the effect that driving licence in question was not issued by the said Licensing Authority. On the basis of evidence led, learned Tribunal has rendered the impugned Award.

In this appeal, vide order of 8th August, 2011, respondent No.2-owner of vehicle in question had chosen not to appear despite service and was accordingly proceeded *ex parte*. Respondent No.1/claimant is served, but there is no representation on his behalf.

Learned counsel for appellant submits that even before learned Tribunal, respondent No.2-owner of vehicle in question had not led any evidence regarding the authenticity of driving licence in question and so, appellant is not liable to pay the awarded compensation. Since respondent No.2 herein had deposed before learned Tribunal as R1W1 and therefore, it is submitted that Report (*Mark 'A'*) ought to have been accepted by learned Tribunal. Nothing else is urged on behalf of appellant.

With the assistance of learned counsel for appellant-Insurer, impugned Award and evidence on record is perused and thereafter, it becomes evident that the initial stand of owner of vehicle in question in reply to claim petition was that the vehicle in question was not involved in the accident. Pertinently, the evidence of respondent No.2 is silent about the driving licence in question. In such a situation, strict rules of evidence are not required to be adhered, to as the evidence of authorized officer of appellant-Insurer remains unchallenged qua the Report (*Mark 'A'*) of the concerned Licensing Authority. It is evident from the aforesaid Report that the licence of driver of vehicle in question was fake.

Supreme Court in *Pushkar Mehra v. Brij Mohan Kushwaha and Others*, (2015) 12 SCC 688 has reiterated that in the first instance, it is the duty of insurer to satisfy the Award and thereafter, to recover it from owner of the offending vehicle.

Applying the afore-noted dictum of Supreme Court to the facts of the instant case, impugned Award is modified to the extent of granting recovery rights to appellant qua respondent No.2 herein.

With aforesaid modification, this appeal is disposed of.

Statutory deposit, if any, be refunded to appellant-Insurer as per Rules.

(SUNIL GAUR)
JUDGE

MARCH 22, 2017

s

