

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

Date of Decision: February 06, 2017

+ **MAC.APP. 308/2008 & C.M.7025/2008**

NATIONAL INSURANCE CO.LTD. Appellant

Through: Ms. Nanita Sharma, Advocate

versus

KRISHNA DEVI & ORSRespondents

Through: Nemo

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

**JUDGMENT
(ORAL)**

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Impugned Award of 29th January, 2008 grants compensation of ₹3 lacs each to respondents-claimants on account of death of one *Angrej Singh* in a road accident on 5th November, 2002. The factual background of this case already stands noted in the impugned Award and so, it needs no reproduction. Suffice to note that there is no challenge to the quantum of compensation awarded, but the challenge is restricted to obtaining of recovery rights *qua* respondent No.6. It is so evident from the order of 27th April, 2009. Apart from the evidence of claimant and other witnesses, there is evidence of *RW-1-Sanjeev Kumar*, Dealing Assistant from the concerned Transport Authority, which requires consideration in this appeal. On the basis of the evidence recorded, learned Tribunal has rendered the impugned Award.

The challenge to impugned Award by learned counsel for appellant is on the ground that recovery rights ought to have been granted to appellant-insurer as the driving licence of driver of the vehicle in question had expired on 24th October, 2002 and so, on the date of the accident i.e. 5th November, 2002, the driver of the vehicle in question was not holding a valid driving licence. To submit so, learned counsel for appellant has drawn the attention of this Court to evidence of *RW-1* from the concerned Transport Authority. It is contended by learned counsel for appellant that learned Tribunal has erred in taking into consideration the photocopy of Receipt (*Mark-A*) indicating that driver of vehicle in question was under training from 23rd October, 2002 till 12th November, 2002. Thus, it is submitted that recovery rights deserve to be granted *qua* owner and driver of the vehicle in question. Nothing else is urged on behalf of appellant.

There is no representation on behalf of respondents. As per order of 22nd September, 2008, none had appeared on behalf of owner and driver of the vehicle in question. They were *ex parte* even before learned Tribunal.

With the assistance of learned counsel for appellant, impugned Award and the evidence on record have been perused and thereupon, I find that though on date of the accident, driving licence of driver of the vehicle in question was not renewed, but it has not been elicited from *RW-1* from concerned Transport Authority, as to when the application for renewal of driving licence was made. This is crucial for the reason that if a person upon expiry of driving licence has made an application for its renewal in time, then it cannot be taken that the said person was driving

the vehicle in question without licence.

In the instant case, it is evident from the Receipt/Certificate (*Mark-A*) that the driver of vehicle in question was under training with Automobile Association Upper India from 23rd October, 2002 till 12th November, 2002. In the absence of evidence as to when renewal of driving licence was sought, grant of recovery rights *qua* owner and driver of the vehicle in question is unwarranted.

In view of aforesaid, this appeal and the application are accordingly dismissed.

(SUNIL GAUR)
JUDGE

FEBRUARY 06, 2017

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