$~R-203

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

Date of Decision: January 19, 2017

\+ **MAC. APP. 213/2009 & C.M.6016/2009**

NEW INDIA ASSURANCE COMPANY LTD. ..... Petitioner
Through: Mr. Abhishek Kumar, Advocate

versus

HARI SINGH ..... Respondent
Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Impugned Award of 4th November, 2008 grants compensation of ₹11,38,852/- with interest to respondent-claimant due to death of one *Jameswar Mishra* in a road accident on 19th April, 1994. The facts of this case are already noted in the opening paragraph of impugned Award and so, need no reproduction.

Liability to pay the compensation is disputed by appellant-insurer on the ground that respondent-driver was not holding a valid driving licence and so, appellant-insurer is not liable to indemnify respondent-owner of the vehicle in question. Before learned Tribunal, appellant had got a witness from the concerned licencing authority examined to prove that licence number C93060216 was issued in the name of *Karan Singh* on 7th June, 1993 and was valid for driving auto rickshaw and Light Motor Vehicle (LMV). Respondent-owner of the vehicle in question had asserted in his evidence that he had ensured that respondent-driver was having a valid driving licence and there is no cross-examination of respondent-owner.

During the pendency of this appeal, learned counsel for respondent-owner had produced a copy of driving licence and a Verification Report, which has been taken on record vide order of 27th August, 2009 and appellant was directed to verify its genuineness and to submit the verification report through Investigator, which has been done.

As per Investigator's Report submitted by appellant, respondent-driver was holding a valid driving licence from the year 1996 upto the year 1999 for Heavy Motor Vehicle, but the accident is of a prior period and so, the said Report is of little assistance. However, alongwith appellant's Verification Report, a copy of driving licence of respondent-driver, which is valid from the year 1996 to 1999, has been filed and on its reverse side, old licence number is given, which infact, according to appellant, pertains to *Karan Singh,* who has nothing to do with this case.

It is evident from order of 27th August, 2009 that respondent-owner has been permitted to place on record a Report of 24th July, 2009 issued by Directorate of Transport, New Delhi, which gives a new driving licence number of appellant as C096100234 and it also reveals the previous licence number, which infact appears to be that of one *Karan*

Singh, who is a third party. During the course of hearing, it was sought to be urged by appellant's counsel that Licencing Officer's Communication of 24th July, 2009 pertains to post-accident period and is of no avail.

On the aspect of liability being of insurer, if owner had taken reasonable care, Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 has reiterated as under:-

> *"(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.*
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> *(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case."*

After having considered the submissions advanced by both the sides and on perusal of impugned Award and the evidence on record, I find that mention of previous licence number, which pertains to third party, in the aforesaid Communication pertaining to respondent-driver, does create a reasonable doubt, which absolves respondent-owner as there is unchallenged evidence on record to the effect that respondent-owner had exercised due diligence before employing respondent-driver on the vehicle in question.

In the aforesaid view, I find no justification to grant recovery rights to appellant. Hence, this appeal and the application are dismissed. The statutory deposit, if any, made by appellant be refunded to appellant through counsel, as per Rules.

(SUNIL GAUR)
JUDGE

JANUARY 19, 2017
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