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

Date of decision: March, 27, 2017

+ **MAC.APP. 313/2008**

NEW INDIA ASSURANCE CO. LTD Appellant
Through: **Mr. D.K. Sharma, Advocate**

Versus

KUMARI LOVELY (MINOR) & ORS. Respondents
Through: **Mr. Durgainder Singh, Advocate**

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

J U D G M E N T
O R A L

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Appellant is the Insurer of TATA Indica car in question, which was involved in a road accident on 26th September, 2003 and is aggrieved by impugned Award of 2nd February, 2008, which directs appellant to pay awarded amount of ₹89,185/- with interest @7% p.a. on account of injuries sustained by respondent No.1-injured in the abovesaid road accident.

The facts are already noted in the impugned Award and so need no reproduction for the reason that vide order of 27th April, 2009, this appeal was admitted on a limited issue of recovery rights qua respondents No.2 & 3. Though respondent No.3-owner of TATA Indica car in question is

represented but respondent No.2-driver of offending vehicle in question has chosen not to appear despite service. Before learned Motor Accident Claims Tribunal (*hereinafter referred to as the 'Tribunal'*), appellant had relied upon evidence of an official (R3W2) from concerned Licensing Authority, who had deposed in respect of driving license in question and the evidence of its Assistant Manager (R3W1) regarding sending of Notice under Order 12 Rule 8 CPC to respondents- driver and owner of vehicle in question and to prove its Investigator's report regarding driving license in question being fake. While dealing with the evidence of afore-referred two witnesses, learned Tribunal has concluded that their evidence is not worthy of reliance and has put the liability on appellant to pay the awarded amount.

Learned counsel for appellant assails impugned Award on the ground that from evidence of R3W2, it stands proved that driving license in question was not issued by concerned Licensing Authority and was hence fake. It is so submitted in the face of Licensing Authority's report Ex.R3W1/9, coupled with the fact that Notice under Order 12 Rule 8 CPC was served upon respondents-owner and driver of offending vehicle in question and so, recovery rights ought to have been granted to appellant. Lastly, it submitted that learned Tribunal has erred in not granting recovery rights qua respondent-owner and driver of vehicle in question.

Learned counsel for respondent-owner of offending vehicle in question submits that learned Tribunal has rightly discarded the evidence of R3W1 and R3W2, as from their evidence it does not stand

conclusively proved that driving license in question was fake and so, this appeal deserves to be dismissed being without merits. Nothing else is urged by counsel for the parties.

Upon hearing and on perusal of impugned Award and evidence on record, I do find that the parentage of respondent-driver- *Trilogan Singh* in the driving license in question is different but this by itself would not suffice to conclude that respondent-owner of vehicle in question had not exercised due diligence in employing respondent No.2 as a driver. Otherwise also, by not responding to Notice under Order 12 Rule 8 CPC, no adverse inference can be drawn against owner and driver of vehicle in question, as the Report Ex.R3W1/9 from concerned Licensing Authority reveals that record of driving license in question is not traceable and clear copy of driving license was sought by the said Licensing Authority. In such a situation, no implicit reliance can be placed upon the aforesaid Report issued by the concerned Licensing Authority.

In light of the aforesaid, this Court finds that the reasoning adopted by learned Tribunal to discard the evidence of R3W1 and R3W2 cannot be said to be perverse, as I find no basis to take a different view

Consequently, finding no substance in this appeal, it is dismissed.

The statutory deposit, if any, be refunded to appellant-Insurer.

(SUNIL GAUR)
JUDGE

MARCH 27, 2017

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