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

Decided on: 17th July, 2017

\+ MAC APPEAL No.278/2009 and CM APPP.7985/2009

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur, Advocate with Mr. Amit Gaur, Advocate

versus

SAVITRI DEVI & ORS. ..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mr. Vishwanath Pandey, aged about 58 years, employed with Delhi Police, died due to injuries, suffered in a motor vehicular accident which occurred on 10.08.2002 statedly due to rash driving of two wheeler scooter registration No.DL-3ST-0166 by Sanjay Kumar, who was impleaded as first respondent in the claim case (Suit No.740/2007), instituted by the dependent family members of the deceased, they being first to fifth respondents herein (collectively, the claimants). The said Sanjay Kumar is now the sixth respondent in the appeal.

2. The scooter was owned on the relevant date by M/s. Harlcomp Airflex, which was impleaded as second respondent, it now being seventh respondent in the array. The said motor vehicle was statedly

insured against third party risk with the appellant insurance company, it having been impleaded as the third respondent before the Motor Accident Claims Tribunal (the tribunal).

3. The tribunal after inquiry, by judgment dated 18.03.2009, upheld the case of death having been caused due to negligent driving of the scooter. It awarded compensation in the sum of Rs.12,69,360/- with interest and directed the insurance company to pay. It is noted that the insurance company had taken the plea that there was breach of terms and conditions of the insurance policy since the driver Sanjay Kumar was not holding a valid and effective driving licence. The tribunal rejected the said plea returning a finding that the driver was having a valid and effective driving licence as on the date of the accident.

4. The appeal at hand was filed by the insurance company on various grounds. At the hearing, it is pressed only to seek recovery rights against the sixth and seventh respondent. The parties against which the appeal is pressed, though served, have failed to appear to put in contest.

5. It is noted that before the tribunal witness Padam Singh (RW1), record clerk from the office of motor licensing officer, Mall road, Delhi was summoned and through him document (Ex.RW1/1) was proved, it indicating that Sanjay Kumar (sixth respondent) was holder of driving licence no.P90071821 valid for motor car only, the validity of such licence being till 02.08.2009. In spite of opportunity, the owner (seventh respondent) did not lead any evidence. The insurance

company, on the other hand, proved through Surender Tikko (RW2), Senior Assistant, to have issued a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) vide Ex.RW2/5 calling upon the said insured person to produce the relevant documents. No response was given by the registered owner to the said notice. The insurer had also relied upon copy of the charge sheet (Ex.RW2/8) which had been submitted by the police, it indicating no valid or effective driving licence for purposes of scooter was produced during investigation, this leading to prosecution of Sanjay Kumar, *inter alia,* on the charge for offence under Section 3/181 of the Motor Vehicles Act, 1988.

6. In the above facts and circumstances, it is clear that there was no valid or effective driving licence held by sixth respondent for purposes of scooter, a motor vehicle which is described in law as *"motorcycle"* in terms of Section 2(27) of the Motor Vehicles Act, 1988 and in which respect there is a provision for separate driving licence in terms of Section 10(2) of the Act.

7. For the foregoing reasons, the finding returned by the tribunal is not correct. There has indeed been breach of terms and conditions of the insurance policy. The appellant is granted recovery rights against sixth and seventh respondents. It may take out appropriate proceedings before the tribunal for enforcing the same.

8. By order dated 27.05.2009, the insurance company had been directed to deposit Rs.8,50,000/- with interest with the tribunal within thirty days whereupon the execution of the impugned award was

stayed. Some amount was released from said deposit in favour of the claimants. The insurance company now shall satisfy the award by depositing the entire balance amount with the tribunal within thirty days. The stay stands vacated.

9. The appeal stands disposed of in above terms.

10. The statutory amount, if deposited, shall also be refunded to the appellant insurance company.

R.K.GAUBA, J.

JULY 17, 2017
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