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

Decided on: 10th August, 2017

+ MAC.APP. 718/2013 and CM No.12058-12059/2013

CHANGEJ KHAN

..... Appellant

Through: Mr. Saurabh Kansal, Advocate

versus

UNITED INDIA INSURANCE CO. LTD.

& ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was impleaded as the second respondent being owner of the offending vehicle in the accident claim case (suit no.282/2010) instituted by third respondent herein (claimant) seeking compensation for injuries sustained by him in a motor vehicular accident that took place on 30.12.2009 involving negligent driving of a motor vehicle described as a Tempo (Tata 407) bearing registration no.DL-1LC-9387 driven by the second respondent herein. The appellant admittedly was the registered owner of the said offending vehicle.

2. By judgment dated 16.01.2012, which is impugned by the appeal at hand, the Motor Accident Claims Tribunal (Tribunal), after inquiry, held the second respondent herein to have been negligent

resulting in the accident and injuries being suffered by the third respondent thereby holding him to be the *principal tortfeasor*, also returning a finding that the appellant was vicariously liable with the said driver jointly and severally to pay the compensation. The vehicle was insured against third party risk with the first respondent herein (insurer) for the period in question but the said insurer had raised the defence of breach of the terms and conditions of the policy on the ground that the driving licence presented by the second respondent herein (driver) was fake. The Tribunal accepted the said plea of the insurer and therefore, exonerated it. Though the insurer was called upon to pay the compensation, it was granted recovery rights against the appellant and the driver (second respondent).

3. The recovery rights granted to the first respondent herein are challenged by the appeal at hand on the ground that it was not possible for the appellant while engaging the second respondent herein to go to Patna to verify the driving licence, which had been shown by the driver at the time of he being engaged. The observations of the Tribunal on the subject as appearing in paragraph 25 need to be quoted in *extenso*. They read as under :-

“25. On going through the report of the investigator Ex. R3W2/2, insurance policy Ex. R3W/D and the testimony of R3W1 and R3W2, I find that the respondent no.1 was driving the vehicle using fake license as from the record collected from the Licencing Authority, Patna, no such licence was issued by the authority in the name of respondent no.1. Nothing material has come in the cross-examination of R3W1 and R3W2 to disbelieve them. No evidence is led by the respondent no.2 to prove that he had verified the genuineness of license allegedly in possession of

respondent no.1 before giving him the tempo to drive. Nor there is any evidence to show that he got himself satisfied about the competency and the capability of respondent no.1 to drive the offending vehicle before he was deputed on it. As per the terms of the policy, any person must hold an effective driving license and is not disqualified from holding or obtaining such a license. This very act on the part of respondent no.2 amounts to breach of the insurance policy. It was held in the case of Kamala Mangalal Vayani & Ors., Vs. United India Insurance Co. Ltd. and others (2010) 12 SCC 488 that once a comprehensive insurance policy is admitted on or so proving any breach of insurance conditions, is on the insurer and not claimants. In the present case, the insurance company i.e. respondent no.3 has been able to establish that the vehicle was not plying on the road in consonance with the terms of the policy. Thus, the liability to compensate the petitioner would remain with that of respondent no.1 and respondent no.2 i.e. driver / owner of the offending vehicle jointly and severally.”

4. It is clear that the appellant had not exercised due diligence while engaging the second respondent herein as the driver. In these circumstances, the plea for right to be indemnified cannot be accepted.

5. The appeal and the pending applications are dismissed.

6. The statutory amount deposited by the appellant shall be available to be got released by the first respondent herein (insurer) for part satisfaction of its recovery rights, it being given liberty to enforce the rights respecting the rest by appropriate proceedings before the Tribunal.

R.K.GAUBA, J.

AUGUST 10, 2017

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