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

Decided on: 19th September, 2017

\+ MAC.APP. 630/2012 and CM 10329/2012

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate

versus

JAGAT PRASAD & ORS ..... Respondents

Through: Mr. Saurabh Kansal, Advocate for R-1 to 6

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

JUDGMENT (ORAL)

1. Mahender Pal died on account of the injuries suffered in a motor vehicular accident that occurred on 12.06.2010 due to the negligent driving of a motor vehicle described as trailor, bearing registration no.HR-55J-8155 (offending vehicle), by Ramesh (seventh respondent), it being a vehicle registered in the name of Amit A. Bamb (eighth respondent) and admittedly insured against third party risk with the appellant insurance company (insurer). The first to sixth respondents (collectively the claimants) instituted accident claim case (MACT 136/11/10) on 13.08.2010 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 impleading the said

driver, registered owner and the insurer of the offending vehicle as party respondents. Noticeably, the driver and the registered owner, they being seventh and eighth respondents in the appeal, inspite of notice, suffered the proceedings before the tribunal *ex parte*.

2. During the inquiry, the insurer took up the plea that there was a breach of the terms and conditions of the insurance company as the driving licence, photocopy (Ex. R3W1/F) of which had been handed over to the investigating police officer, was found fake, report (Ex. R3W1/E) of the investigating police officer affirming this position, this, in turn, on the report (Ex. R3W1/G) of the Licencing Authority, Gwalior, M.P. to which the said document purported to relate.

3. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 27.02.2012, upheld the claim and awarded compensation in favour of the claimants fastening the liability on the insurer rejecting its plea for exoneration or grant of recovery rights on the ground that report of the investigating police officer was for a limited purpose and that the insurer had not mustered requisite evidence to prove that the licence was fake.

4. The appeal by the insurer is pressed only to seek recovery rights on the basis of above noted facts referring in this context to the evidence showing that the insurer had issued notice (Ex. R3W1/A) under Order XII Rule 8 of the Code of Civil Procedure, 1908, sent by post vide receipts (Ex. R3W1/B & C), calling upon the driver and owner to produce the driving licence to which there had been no response.

5. The seventh and the eight respondents inspite of being served, have chosen not to appear even at the stage of appeal and are thus set *ex parte*.

6. Having heard the learned counsel for the insurer and having perused the record, this court finds that the insurer had brought home its case of breach of the terms and conditions of the insurance policy. The report of the police had brought on record before the tribunal material indicating that the document in question (driving licence) was forged and fabricated. The insurance company, by issuing and serving the notice under Order XII Rule 8 CPC, duly proved by Puneet Gupta (R3W1), the Regional Head (Legal and TP claims), had called upon the seventh and eighth respondent to produce the driving licence, if any, validly held by the seventh respondent. By taking such steps, the insurer had done what it could do in the given facts and circumstances. With such evidence having come on record, the burden to prove facts to the contrary by bringing in positive evidence vis-à-vis the licence held by the seventh respondent had shifted on to him and the eighth respondent. Since the said respondents failed to give any reply to the notice under Order XII Rule 8 CPC to produce any evidence during the inquiry before the tribunal, or even at the stage of appeal, the only inference that can be drawn is that there was no valid or effective driving licence held by the seventh respondent on the relevant date. [see *New India Assurance Co. Ltd. Vs. Sanjay Kumar & Ors., ILR 2007 (II) Delhi 733 and ICICI Lombard General Insurance Co. Ltd. Vs. Subhash & Ors., MACA 105/2013*, decided on 19.01.2016].

7. The appeal is thus allowed to the effect that the insurance company will have the rights to recover the total compensation paid (inclusive of the principal amount and the interest) to the claimants in terms of the impugned judgment from the eight respondent and for such purposes to take out appropriate proceedings before the tribunal.

8. By order dated 31.05.2012, the insurance company had been directed to deposit the awarded amount with interest with UCO Bank as a pre-condition to the stay against the execution. The said amount was directed to be held in fixed deposit receipt. By subsequent order dated 17.08.2012, sixty percent (60%) of the said deposited amount was allowed to be released to the claimants. The balance lying in deposit shall now be released to the claimants.

9. The statutory deposit shall be refunded to the appellant / insurance company.

10. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 19, 2017
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