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

Decided on: 6th July, 2017

+ MAC.APP. 372/2008

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

LATA CHANDEL & ORS Respondents
Through: Mr. Arvind Duggal, Proxy
Advocate for R-4.

+ MAC.APP. 381/2008

NATIONAL INSURANCE CO. LTD Appellant
Through: Mr. Pankaj Seth, Advocate

versus

MITHLESH PRASHAD SAKLANI & MANOJ & ORS
..... Respondents
Through: Mr. Arvind Duggal, Proxy
Advocate for R-3.

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

JUDGMENT (ORAL)

1. On 19.08.2006, Tarun Chandel @ Tinku (deceased) and Mithlesh Prasad @ Manoj (injured person) with some other young persons of same age group were out going to play football in the direction of Kaushik Enclave. At about 6.10 a.m., a motor vehicle

described as Canter truck bearing no. DL 1M 0862 (the canter) statedly came in a rash or negligent manner hitting Tarun Chandel @ Tinku and Mithlesh Prasad @ Manoj causing injuries to them. In the consequence, Tarun Chandel @ Tinku died. Two claim petitions seeking compensation came to be instituted before the motor accident claims tribunal (tribunal), one (suit no. 631/2006) filed by the parents of the deceased while the other (suit no. 630/2006) by the injured person. In each case Sunil Kumar (respondent in these appeals) was impleaded as the first respondent on the plea that he was the driver of the canter on account of rash or negligent driving on whose part the accident had occurred. Mahender Singh, the registered owner of the canter, one of the respondents in these appeals (he having filed cross-objections), was shown in the array of the claim petitions as second respondent, he statedly being the registered owner of the vehicle. The canter was covered by an insurance policy against third party risk issued by National Insurance Company Ltd. (the appellant) for the relevant period which was also made a party to the claim petitions.

2. The claim petitions were contested in which evidence was led by all sides. In the course of the contest, the insurance company took the plea of breach of policy condition on the ground the driver did not hold a valid or effective driving licence. The evidence led by the driver and owner focused on this aspect as well.

3. The tribunal, by judgment dated 03.01.2008, upheld the case of the claimants that rash or negligent driving of the canter was the cause for accident and awarded compensation in each case. It was brought

out during the inquiry that the driver was relying on copy of driving license which was meant for light motor vehicles. The canter being not a light motor vehicle but a medium goods vehicle, in the submission of the insurance company, was not covered by the said driving license. This contention was upheld. While directing the insurance company to pay compensation, it was granted recovery rights against the owner.

4. The insurance company filed these appeals assailing the directions given by the tribunal to pay to the claimants and then recover from the registered owner, its plea being that it should have been fully exonerated.

5. In the course of hearing on these appeals, the owner has come up with cross-objections under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (CPC), his contention being that the driver had actually shown another license to him at the time of he being engaged, and further the license shown at the inquiry was also sufficient to indicate he was not disqualified from driving the vehicle, and thus, there was no breach of policy conditions and, consequently, the right to recover given to the insurance company is not correct.

6. Having heard the learned counsel for the parties and having gone through the record, this Court is of the view that the directions given by the tribunal do not call for any interference.

7. The tribunal's record shows that the respondent Sunil Kumar while appearing as R1W1 even tried to disown the owner of the

vehicle as his employer, taking the position that he had been falsely implicated though referring to copy of driving license purporting to be one issued in his favour it having come on record as mark 'A'. The owner Mahender Singh, while appearing as R2W1 on the strength of his affidavit (Ex.R2W1/A) confirmed on oath that Sunil Kumar, the respondent, was actually engaged by him as a driver on the vehicle in question. The tribunal, after considering this evidence, has reached the conclusion that Sunil Kumar, was indeed the driver engaged on the vehicle and it was on account of his negligence that the accident had occurred. Pertinent to note here Sunil Kumar never challenged the said conclusion by any appeal. The finding having been returned on proper appraisal of evidence does not call for any interference.

8. But the crucial question which arises is as to whether the cross-objector Mahender Singh, the registered owner of the vehicle (the person insured), was privy to the fact that the driver Sunil Kumar held a license meant only for light motor vehicles (LMV), as is the purport of the document mark 'A' relied upon by the said driver during his testimony. Noticeably, the cross-objector made no attempt to show that it was not the license but there was another valid license which would hold good for a medium goods vehicle. A very vague plea was raised that, at the time of he being engaged, Sunil Kumar had shown some other license. Noticeably, the registered owner would not even say that the said "some other license" which had been seen by him was valid for a medium goods vehicle.

9. In above facts and circumstances, it cannot be said that the driver was holding a valid or effective license for the vehicle in question. This gives a right to the insurance company to raise the plea of breach of policy conditions in that license to drive a light motor vehicle could not conceivably show that the person in question had the capacity or ability to drive a heavier motor vehicle.

10. The proceedings before the accident claims tribunal relate to benevolent law which has to be applied, in letter and spirit, in favour and for the benefit of the claimants. The insurance company is in a position to pay immediately to bring succor to the persons injured. Since it has been given the right to recover, it should not grudge the initial responsibility fastened upon it to pay to the claimants.

11. For the foregoing reasons, the appeals and the cross-objections are dismissed.

12. Statutory deposits, if made, shall be refunded.

R.K.GAUBA, J.

JULY 06, 2017

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