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

Decided on: 07th July, 2017

\+ MAC.APP. 255/2017 and CM No.10130/2017 and 10132-10133/2017

M/S GREAT VALUE FUELS PVT LTD ..... Appellant
Through: Mr. Gaurav Kanth, Advocate

versus

UTTAM RASTOGI & ORS ..... Respondents
Through: Ms. Archana Gaur, Advocate for R-3

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

JUDGMENT (ORAL)

1. On 28.04.2014, a motor vehicular accident took place involving two vehicles one being motor cycle bearing registration no.DL-6S-AE 4960 (Motor Cycle) and a bus bearing registration no.DL-1PD-0133 (bus). The accident resulted in injuries being suffered by two persons Sunil and Uttam Rastogi. On the basis of detailed accident report (DAR) submitted by the local police, in the wake of registration of first information report (no.126/14) of police station Lodhi Colony, accident claim case was registered by Motor Accident Claims Tribunal and, after inquiry, it resulted in judgment dated 27.07.2016.

2. Noticeably, the bus is owned by the appellant and it was concededly insured against third party risk for the period in question with the third respondent.

3. By judgment dated 27.07.2016, the tribunal awarded compensation in favour of the claimants/ first and second respondents respectively and upheld the contention of the insurance company as to the breach of the policy condition on the basis of the finding that the driving license presented by the driver of the bus (fourth respondent herein), he having been engaged by the appellant (registered owner) upon verification, was found to be fake.

4. While the insurance company was asked to satisfy the award, it was granted recovery rights against the appellant. It is this part of the direction in the impugned judgment which is challenged by the appeal at hand.

5. On being asked, the learned counsel for the appellant fairly conceded that the license presented by the driver was a fake document. He also conceded that the insurance company had issued and served a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) calling upon the insured (registered owner) to produce the valid and effective driving license but the appellant did not respond to the said notice. He further fairly conceded that at the stage of such opportunity, the appellant did not adduce any evidence.

6. The contention raised by the appellant is that when the driver was engaged, he had shown a valid and effective driving license and, therefore, due diligence had been exercised and if the driver was later found to be using a fake document, the insured cannot be held liable. Reliance is placed on *Pepsu Road Transport Corporation Vs. National Insurance Company, (2013) 10 SCC 217* which, *inter alia*, referred to the law on the subject as laid down authoritatively in *United India*

Insurance Co. Ltd. Vs. Lehru, (2003) 3 SCC 338.

7. Having heard the learned counsel, this court finds that the judgment cited by the appellant does not assist it for the simple reason there is no evidence led to prove that at the time he being engaged, the driving license of the driver of the offending vehicle had been checked and verified to be found to be a valid document or, to put it simply, that the registered owner of the vehicle had exercised due diligence. In absence of evidence to such effect, the contentions raised in the appeal cannot be accepted.

8. The appeal is devoid of substance and is dismissed. The pending applications also stand dismissed.

9. The amount deposited by the appellant in terms of interim order dated 10.03.2017 shall be released in favour of the insurance company subject to it showing proof of having satisfied the award in favour of the claimants.

10. The statutory amount, if deposited, shall be refunded.

R.K.GAUBA, J

JULY 07, 2017
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