

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

Date of decision: April 10, 2017

+ **MAC.APP. 645/2013**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Amit Gaur, Advocate

versus

MASTER AKASH MITTAL & ORS.Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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Appellant is the Insurer of Tata Qualis No. HR 55 CT 1699 which was involved in a road accident on 23rd October, 2006 resulting in injury to *Master Akash Mittal*, in whose claim petition, impugned Award of 10th May, 2013 has been rendered. Compensation of ₹1,52,474/- with interest @ 9% *per annum* has been awarded to respondent-Claimant by Motor Accident Claims Tribunal (North-II), Delhi (*hereinafter referred to as the Tribunal*).

Since the challenge to impugned Award is not on quantum of compensation granted but is on the liability aspect, therefore, the facts as noted in impugned Award need not be adverted to. Suffice to note that respondent No.2 herein is the owner of Tata Qualis in question and

respondent No.3 is its driver. As per order-sheet of 17th November, 2012, appellant-Insurer had asserted before the Tribunal that there was breach of insurance policy in respect of driving licence of driver of vehicle in question. However, for reasons best known, no evidence was led by appellant-Insurer before the Tribunal.

In this appeal, application for stay was dismissed, but appellant was allowed vide order of 14th February, 2014 to lead additional evidence. The additional evidence led by appellant comprises of deposition of its Administrative Officer (Legal) regarding the driving licence in question being not issued by concerned Licencing Authority. Appellant by way of additional evidence has also got examined concerned official from the Licencing Authority regarding the driving licence in question being issued to one *Virender Kumar S/o Bhag Chand* and not to respondent No.3-purported driver of vehicle in question. It is relevant to note that the evidence of appellant's Administrative Officer (AW-1) and of the official (AW-2) from the concerned Licencing Authority remains unrebutted, as despite service, respondents-owner and driver of vehicle in question have chosen not to contest this appeal. It is so evident from the order of 6th January, 2014. It is also relevant to note that respondents-driver and owner of vehicle in question had not led any evidence before the Tribunal as well.

With the assistance of learned counsel for appellant-Insurer, impugned Award, additional evidence and trial court record have been perused. The precise submission of appellant's counsel is that in view of additional evidence led, it stands proved that the driving licence in

question, which was seized in the FIR case regarding this accident, does not belong to respondent No.3-purported driver of vehicle in question and since no evidence has been led by owner and driver of vehicle in question, therefore, appellant ought to be granted recovery rights qua the driver and owner of vehicle in question. as they had not led any evidence. Nothing else is urged on behalf of appellant-Insurer.

In the face of additional evidence, this Court finds that the vehicle in question was driven by respondent No.3, who was not holding a valid driving licence, and so recovery rights ought to be granted to appellant-Insurer qua respondents No. 2 & 3.

In light of aforesaid, impugned Award is modified to the extent of granting recovery rights to appellant-Insurer qua respondents No.2 & 3, who are the owner and driver of vehicle in question.

With aforesaid modification, this appeal is disposed of.

Statutory deposit, if any, be refunded to appellant as per Rules.

(SUNIL GAUR)
JUDGE

APRIL 10, 2017

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