

\$~R-366 & 367

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

Decided on: 26th October, 2017

+ MAC APPEAL 597/2011 & CM 639/2015

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Priyadarshi Acharya,
Advocate

versus

PINKI SAINI & ORS. Respondents

Through: Ms. Sunita Harish and Mr.
Girish Kandpal, Advocates for
R-1 to 5

+ MAC APPEAL 794/2011 & CM 16429/2011

GOVINDAS GLOBAL EXPORTS PVT. LTD. Appellant

Through: None

versus

PINKI SAINI & ORS Respondents

Through: Ms. Sunita Harish and Mr.
Girish Kandpal, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 14.06.2005, a motor vehicular accident took place in which Surinder Kumar Saini died. His wife and other members of the family dependent on him (collectively, the claimants) instituted accident claim case (suit no.384/2009) before the Motor Accident Claims

Tribunal (Tribunal) on 21.12.2005, on the basis of averments that the accident had been caused due to the negligent driving of motor vehicle described as Traila bearing registration no.HR-38L-2065 (offending vehicle) by Rajan (driver). In the claim case, besides the said driver, M/s. Govind Das Global Exports Pvt. Ltd. (appellant in MACA 794/2011) was also impleaded as the respondent, it admittedly being the registered owner of the offending vehicle, this in addition to New India Assurance Company Ltd. (insurer), it being the appellant in MACA 597/2011.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and decided the claim case, by judgment dated 11.03.2011, holding the said driver responsible for the accident. It awarded compensation in the sum of Rs.28,59,600/- in favour of the claimants (first to fifth respondents in these appeals).

3. It appears that, in the course of contest, the insurer had taken the plea that there was breach of terms and conditions of the insurance policy on the ground the driver was not holding a valid or effective driving licence. It relied, *inter alia*, on the evidence of its official S.K. Arora (R1W1) to prove that notices under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) had been issued (vide Ex. R1W1/5-6) sent by post (Ex. R1W1/7-8) but inspite of service no valid or effective driving licence was produced. It further appears that during the course of investigation, the driver had handed over a copy of the document that purported to be a driving licence issued by the Transport Authority at Ropar (Punjab). The insurer had got the said document verified, the report (Ex. R1W1/3) indicating it to be a

fabricated document. The insurer would also point out that the record of the corresponding criminal case also contained a copy of such document purporting to be a driving licence issued by the transport authority at Ropar (Punjab).

4. On the other hand, the registered owner examined its employee Sanket Bansal (R3W1) who deposed, on the strength of his affidavit (Ex. R3W1/A) and relied on another document purporting to be a driving licence issued by the transport authority at Agra, U.P., such document if genuine having the effect of showing that there was a valid or effective driving licence possessed by the driver.

5. The tribunal, however, was not impressed with the evidence of the registered owner for the reason the document purporting to be the licence issued by the transport authority at Agra had not been made available earlier and, therefore, the insurer had no occasion to have it verified, no evidence having been called from the concerned transport authority.

6. It is against the above backdrop that the tribunal, while directing the insurer to pay the compensation awarded in favour of the claimants, granted it recovery rights against the registered owner.

7. Both the insurer and the registered owner have come up with their respective appeals, the plea of the insurer being that it instead of being called upon to pay, it should have been exonerated, the prayer of the registered owner, on the contrary, being that its evidence about the valid licence obtained from the transport authority at Agra has been wrongly ignored.

8. The appeals have been pressed on the limited issue as to whether the driver of the vehicle held a valid or effective driving licence on the date of the accident or not.

9. After some hearing, the learned counsel on both sides fairly conceded that the issue would require further evidence in as much as no effort had been made by either side to bring in the report of the transport authority at Agra.

10. In these circumstances, as jointly prayed, the appeals are allowed to the effect that a limited inquiry into the validity of the document purporting to be a licence in favour of the driver in question issued by the transport authority at Agra is remitted to the tribunal for adjudication. Needless to add, the burden of proving the genuineness of the said document, and its validity for the date of cause of action, will be primarily that of the registered owner of the vehicle, the right of the insurer being to lead evidence in rebuttal, if any. Ordered accordingly.

11. Since the limited inquiry on which the matter is being remitted concerns only the insurer and the registered owner, the said parties alone shall stand directed to appear before the tribunal on 24.11.2017. The claimants, if they so wish, however, may also participate in such proceedings.

12. By order dated 07.07.2011 in MACA 597/2011 of the insurer, it had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General, such amount having been directed to be put in fixed deposit receipt. By subsequent order, part of the said amount was permitted to be released to the claimants. The

balance lying in deposit shall also now be released to the claimants alongwith accrued interest. If there is any deficiency, the insurer will be obliged to make the same good by requisite deposit with the tribunal within 30 days. In case of default, the claimants will have the liberty to take out appropriate execution proceedings before the tribunal.

13. The statutory deposits made in these appeals shall be refunded.

14. Both appeals and the pending applications are disposed of in above terms.

OCTOBER 26, 2017

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R.K.GAUBA, J.



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