

\$~R-537

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 22nd November, 2017

+ MAC.APP.729/2012

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. J.P.N. Shahi, Advocate.

versus

BEENA YADAV AND ORS Respondents
Through: None.

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

JUDGMENT (ORAL)

1. On 31.08.2008, a motor vehicular accident had occurred involving negligent driving of motor vehicle described as TATA 407 bearing registration No. UP-16-3227 and as a result of injuries suffered Sagar Yadav died. His wife and six other members of the family dependent upon him (they being first to seventh respondents, collectively, the claimants) instituted accident claim case (Suit No. 741/2008) on 24.10.2008. The Tribunal held inquiry and returned a finding that the accident had been caused due to negligent driving of the said vehicle by Arbind Giri (the driver and eighth respondent in the appeal). As per the material available before the Tribunal, the vehicle was registered in the name of Sudhir Kumar Nagar (the owner and ninth respondent in the appeal), at whose instance it was insured against third party risk for the period in question with the appellant (the insurer). The insurer while resisting the claim had

taken up the defence of breach of terms and conditions of the insurance policy on the ground that the driver did not hold a valid or effective driving licence at the relevant time. This plea, however, was rejected by the Tribunal and by judgment dated 09.04.2012, liability to pay compensation thereby determined was placed at the door of the insurer.

2. The insurer reiterates the above plea by the appeal at hand seeking recovery rights. It had examined through inquiry before the Tribunal, its senior assistant Mr. S.K. Arora (R3W1) to prove that the document purported to be the driving licence which had been handed over by the eighth respondent to the police, was a fake document and further that in spite of notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC), neither the eighth respondent nor the ninth respondent adduced any evidence to prove any valid or effective driving licence. The Tribunal was not impressed with the said evidence, *inter alia*, for the reason, the investigator on whose report (Ex.R3W1/B) reliance had been placed, had not been examined.
3. During the pendency of the appeal, with permission from the court, the appellant led further evidence to examine Mr. Bhoop Narayan Singh (AW-1) and Mr. Hari Om Morya (AW-2) both officials from the Regional Transport Authority, Agra. In spite of the notice, the eighth or ninth respondents have not contested the said appeal.
4. At the hearing, there is no appearance on behalf of eighth or ninth respondent. The matter has been heard with the assistance of

counsel for the insurance company and by perusal of Tribunal's record.

5. The evidence of the two above mentioned witnesses examined during the pendency of the appeal proves that the document relied upon as being the driving licence of the eighth respondent, was issued in the name of one Kamal Kishore Sharma. Apparently the document in question was fake. Witness R3W1 examined during the inquiry had proved notice under Order XII Rule 8 CPC (Ex. R3W1/C). It was also proved by the said witness that there was no response to the said notice. This is confirmed by the proceedings recorded before the Tribunal. In these circumstances, the natural inference is that eighth or ninth respondents are not in a position to show existence of any valid or effective driving licence of eighth respondent.
6. Thus, the insurance company has brought home its case for grant of recovery rights which are hereby granted in its favour and against the eighth and ninth respondent who are held liable jointly and severally to pay the compensation. For enforcement of such rights, the insurance company will have the liberty to approach the Tribunal with appropriate execution application.
7. The statutory deposit shall be refunded.
8. The appeal stands disposed of with these observations.

R.K.GAUBA, J.

NOVEMBER 22, 2017

srb