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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 20th September, 2017

+ MAC.APP. 345/2016

NARENDER SINGH Appellant

Through: Mr. Syed Hasan Isfahani, Adv.

Versus

NATIONAL INSURANCE CO LTD Respondent

Through: Mr. Arihant Jain for Ms.
Shantha Devi Raman, Adv.

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

JUDGMENT (ORAL)

1. On the accident claim case (suit no. 682/2008) instituted by one Asha Rani seeking compensation under Section 166 of Motor Vehicles Act, 1988 on account of injuries statedly suffered by her husband Lal Chand, they proving fatal due to motor vehicular accident that had occurred on 03.01.2007 at about 4:20PM involving negligent driving of Tata 407 bearing registration no. DL 1LC 1460, the tribunal, by judgment dated 08.05.2009, made an award of compensation in the total sum of Rs. 74,360/- with interest directing the respondent insurance company to pay the same in the first instance, it concededly being the insurer against third party risk in

respect of the said vehicle but granted it recovery rights against the appellant herein, he admittedly being the registered owner of the said vehicle. The recovery rights were granted in view of the evidence adduced by the respondent, *inter alia*, through Naveen Kumar (R3W1), an official of State Transport Authority, Delhi to the effect that the vehicle was not covered by a valid permit as on 03.01.2007, the date of the accident. It appears that inspite of opportunity and notice, the appellant did not participate in the proceedings before the tribunal.

2. Be that as it may, at the stage of execution, the appellant moved objection petition on the basis of which the executing forum held further inquiry. In the said further inquiry, at the instance of the appellant, another official from the state transport authority was called, he being Rajan Thomas (JD1W1). The testimony of JD1W1 clearly showed that the vehicle was initially registered in the name of Birender Kumar in whose name a valid permit did exist for the period ending with 05.08.2006, the vehicle and the permit having been transferred in the name of the appellant w.e.f. 11.02.2002 and that a valid permit came to be issued in the name of the appellant from 11.02.2002 which was valid upto 10.02.2007 which undoubtedly would cover the date of accident as well.

3. The tribunal, however, by order dated 19.09.2014 took the view that such evidence could not be taken note of at the stage of execution, implying that the executing forum could not go behind the decree. If that were the view to be taken by the executing forum, one fails to

understand why the objection petition of the appellant was put to inquiry in the first place.

4. Be that as it may, the evidence led during the execution proceeding would confirm that a valid permit did exist in the name of the appellant on the date of the accident.

5. While the above evidence clearly brings home the contention of the appellant that a valid permit did exist in his name for the vehicle in question for the date on which the cause of action arose, it also cannot be ignored that the appellant did have opportunity to show the correct facts during the inquiry before the tribunal. In fact, the evidence led by the insurance company also shows that it had issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) to the appellant calling him upon to produce the permit, but there was no response, this having been brought on record through K.K. Arora (R3W2).

6. The failure on the part of the appellant to effectively assist the tribunal at the time of the inquiry added to the burden of the insurance company which all along was searching for the valid permit and was making efforts to find the correct state of affairs, *inter alia*, by summoning witnesses. The argument of the counsel for the appellant that such defence was not taken in the pleadings by the insurance company is found to be factually incorrect as paras 4 and 5 of the written statement of the insurance company did raise the issue relating to the permit such being one of the defences available to it in law.

7. Section 168(1) of the Motor Vehicle Act 1988 gives the discretion to the tribunal, and consequently also to the appellate

forum, to specify the amount which is to be paid by either the insurer or the owner or the driver of the vehicle involved in the accident or by all or any of them. In the given facts and circumstances, while the appellant may be entitled to be indemnified by the insurance company, in view of neglect on his part by not rendering proper assistance at the inquiry it must entail a direction that he shall bear the interest liability which has been added to the burden of the insurance company. Ordered accordingly.

8. Thus, the appeal is disposed of with directions that the insurance company shall bear the liability to pay the principal amount of compensation, the amount paid by it to the claimant towards the interest liability being recoverable from the appellant.

9. The insurance company shall notify to the appellant the amount paid by it to the claimant on account of interest by appropriate communication within thirty days whereupon it shall be the responsibility of the appellant to pay the same to the insurer within thirty days of receipt of such communication. In the event of default on the part of the appellant, the insurance company shall have the liberty to take out appropriate proceedings before the tribunal.

10. The statutory amount deposited by the appellant shall presently be retained. In the event of insurance company being constrained to recover the liability of the appellant in above terms through the process of the tribunal, it shall be made available to the tribunal for satisfaction of the said claim of the insurance company. Conversely, the said amount shall be refundable to the appellant upon proof being

shown of the direction to pay the amount of interest in favour of the insurance company having been satisfied.

R.K.GAUBA, J.

SEPTEMBER 20, 2017

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