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

\+ MAC.APP. 467/2008

UNITED INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. A K De, Advocate

Versus

SAMEER TUTEJA & ORS ..... Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>O R D E R</u>
% **03.01.2017**

Appellant-insurer is aggrieved by the impugned Award of 3rd June,2008 vide which respondent-claimant has been awarded compensation of ₹1,14,000/- along with interest @7%per annum, on account of grievous injuries in a road accident on 5th October, 2006.

The facts of this case are already noted in the opening paragraphs of impugned Award and so needs no reiteration. Vide order of 4th November,2009 scope of this appeal has been confined to appellant's entitlement to recovery of awarded compensation from respondents No.2 & 3 who are owner and driver of the vehicle in question. It is pertinent to note that respondent no.2 who is driver of the vehicle in question and the appellant, have led evidence before the Tribunal.

Learned counsel for the appellant-insurer submits that notice to produce original insurance policy and original driving licence was issued to the driver and owner of the vehicle in question but they have failed to produce it and so the decision of Hon'ble Supreme Court in '***National Insurance Co. Ltd. vs. Swaran Singh & Ors.', 2004 I AD (SC) 491*** relied upon by learned Tribunal is not applicable to the facts of the instant case.

Reliance is placed by learned counsel for the appellant-insurer upon Supreme Court's decision in ***'National Insurance Co. Ltd. vs. Vidhyadhar Mahariwala & Ors. '(2008) 12 SCC 701*** to submit that in a case of driver not holding a valid driving licence, insurer is not liable to pay the compensation. Thus, it is submitted on behalf of appellant-insurer that recovery rights be granted to recover the awarded amount from the owner of vehicle in question, as appellant had already deposited the entire awarded amount which has been released to respondent-claimant vide order of 4th November, 2009.

Respondent-claimants in this appeal have chosen not to appear and were proceeded ex-parte.

On hearing and perusal of the impugned award, this court finds that appellant-insurer has failed to show that it was in the knowledge of the owner that driving licence of the driver of vehicle in question was fake. Such a view is taken in face of evidence of driver of vehicle in question, who has not been cross examined on the aspect of driving licence being fake. So reliance placed by counsel for appellant-insurer on Supreme Court's decision in ***Vidhyadhar Mahariwala*** (supra) is of no avail. This court is of the considered view that no ground is made out for granting recovery rights to the appellant-insurer. Accordingly, this appeal is dismissed.

(SUNIL GAUR)
Judge

JANUARY 03, 2017
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