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

***Decided on: 13th July, 2017***

\+ MAC APPEAL 390/2017

SHISH PAL & ANR. ..... Appellants
Through: Mr. Praveen Kumar Jain, Adv.

versus

SHASHI & ORS. ..... Respondents
Through: Mr. J.P. N. Shahi, Adv. for R-7.

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

**JUDGMENT (ORAL)**

1. The only plea pressed in this appeal directed against judgment dated 24.11.2016 of the motor accident claims tribunal on the file of accident claim case (MACT 3294/2016) of the first to sixth respondents (collectively, the claimants) is against grant of recovery rights to the seventh respondent, it being the insurer of the truck bearing No. HR 55 R 1570 (the offending vehicle) due to negligent driving of which the accident, which was the subject matter of such proceedings, statedly occurred resulting in death of Ashok Kumar Sharma, giving rise to the cause of action. It is admitted case of the appellants that the truck is registered in the name of the second appellant and it was driven at the relevant point of time by the first appellant.

2. It appears from the material submitted with the appeal that, while seeking to contest, reliance was placed by the first appellant on a driving license, copy whereof was annexed with the written statement. In the course of inquiry, the insurer led evidence by examining Vikas Kumar, Administrative Officer (R3W1), *inter alia,* testifying that the license relied on had not been found to be genuine. This deposition was based on report obtained from the Regional Transport officer, Farukhabad (UP). The insurance company had issued notice under Order 12 Rule 8 of Code of Civil Procedure, 1908 (CPC) (Ex.R3W1/3) calling upon the appellants to produce the relevant documents including the driving license. Concededly, there was no response to the said notice. The insurance company also relied on the fact that even during investigation by the police into the corresponding criminal case, in FIR No.878/2014 of police station Okhla Industrial Area, no valid or effective driving license was produced which led to prosecution of the first appellant, *inter alia,* on the charge for offence under Section 3 read with Section 181 of the Motor Vehicles Act, 1988. In corroboration of the evidence of R3W1 it examined Surendra Kumar Verma, ARTO, Farukhabad, UP to prove communication dated 15.10.2016 (Ex.R3W2/A). The said evidence indicates that a number of official records of the office of ARTO, Farukhabad had gone missing and this was subject matter of inquiry by a committee of seven members leading to registration of FIR No. 224/2013 by police station Farukhabad on 24.10.2013.

3. The communication and the evidence of R3W2, however is, neither here nor there. It would say that the said authority was unable

to confirm or deny the genuineness of the document which had been relied upon, it bearing no. 2375/FKD/08.

4. The tribunal accepted the evidence of the insurer to conclude that there was no valid or effective driving license and on that basis held the owner of the vehicle to be in breach of the terms and conditions of the insurance policy and granted recovery rights.

5. It is the assertion of the appellants that the driving license which was relied upon and referred to in the written statement was a valid document. The counsel concedes that the driver should have entered the witness box to affirm on oath, by positive evidence, that the license in question was valid or effective and he submits that opportunity may now be granted so that the issue can be resolved properly.

6. Given the above facts and circumstances, without disturbing the award of compensation in favour of the claimants, the short issue as to whether the license relied upon by the appellants is a genuine document is remitted to the tribunal for further inquiry. In such inquiry, the appellants will be given an opportunity to lead evidence to show by positive material that the license relied upon is genuine. After such opportunity has been availed, the insurance company will be entitled to lead evidence in rebuttal, if any. Needless to add, the insurance company may rely on evidence already adduced on this score.

7. Given the fact that the issue is very short, the tribunal is requested to conclude the further inquiry expeditiously, preferably within three months of the date now being given for the next

appearance of the parties before it. Needless to add, the recovery rights shall be regulated in accordance with the conclusions returned in such inquiry, as ordered above.

8. The parties shall appear before the tribunal on 14th August, 2017.

9. The appeal stands disposed of in above terms.

**R.K.GAUBA, J.**

**JULY 13, 2017**
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