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

Date of Decision: January 27, 2017

+ **MAC. APP.497/2008 & C.M.17050/2009**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Manoj Ranjan Sinha,
Advocate

versus

DURGA DEVI & ORS. Respondents

Through: Mr. Sandeep Vishnu, Advocate for
Respondent No.9

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned Award of 22nd July, 2008 grants compensation of ₹1,57,000/- with interest @ 9 % *per annum* to respondents-claimants in respect of death of one *Mahinder Singh Thappa* in a road accident on 28th September, 1994. The facts of this case are already noted in the impugned Award and so, need no reproduction. Suffice to note that impugned Award puts the liability squarely on appellant to pay the awarded amount while noting that there is no sufficient evidence on record to prove that driver-*Ravi* was served with the Notice under Order 12 Rule 8 CPC for

producing the original driving licence. It is also noted in the impugned Award that there is no conclusive evidence to show that the driving licence of driver-*Ravi* was fake or invalid. To conclude so, learned Tribunal has relied upon the evidence of concerned person (R3W1) from the local licencing authority, who has deposed that the record of driving licence number in question is not traceable in their office.

In this appeal, learned counsel for appellant-insurer seeks recovery rights qua respondents No.8 to 10, who are the driver-*Ravi*, the recorded owner-*Chander Parkash* and one *Gurcharan Singh*, who is said to be the subsequent owner of vehicle in question. Learned counsel for appellant-insurer relies upon a decision of a co-ordinate Bench of this Court in MAC. APP 378/2005 titled *Vilasani Kurup v. National Insurance Company & Others*, rendered on 17th April, 2007 to contend that once Notice under Order 12 Rule 8 of CPC has been issued to contesting respondent No.9, who is recorded owner of vehicle in question, then the liability cannot be saddled upon the insurer and recovery rights ought to be granted to appellant-insurer. Reliance is also placed upon Supreme Court's decision in *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 to submit that if the driving licence is not valid, then the recovery rights ought to be granted to insurer. Nothing else is urged on behalf of appellant.

Learned counsel for respondent No.9-claimant, who is the recorded owner of the vehicle in question, supports the impugned Award and submits that the decisions in *Swaran Singh (supra)* and *Vilasani Kurup (supra)* have no application to the facts of the instant case because it is

not proved that the driving licence was either fake or invalid. It is submitted by learned counsel for contesting respondent that the vehicle in question was sold by respondent No.9 to respondent No.10 on 9th September, 1992 and if appellant has to recover the awarded amount, then it has to be recovered from respondent No.10 and not from respondent No.9. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the driver-*Ravi* and purported subsequent purchaser-*Gurcharan Singh* have chosen not to contest either before learned Tribunal or here. It is true that the recorded owner-*Chander Parkash* has not responded to the Notice under Order 12 Rule 8 of CPC and had chosen to remain *ex parte* before learned Tribunal. Rather, the report on Notice sent under Order 12 Rule 8 of CPC sent to the recorded owner has been received back with the report of *refusal*. So, inconclusive report regarding the driving license is of no avail to the case of contesting respondent No.9. Since there is no evidence on record as to when the vehicle in question was sold by respondent No.9 to respondent No.10-*Gurcharan Singh*, therefore, respondent No.9 cannot be absolved from indemnifying appellant.

In the peculiar facts and circumstances of this case, impugned Award is modified to the extent that the awarded amount, if already paid to respondents-claimants, would be recoverable from respondent-*Gurcharan Singh* and the driver-*Ravi*, in the first instance, and if appellant is not able to recover it from them, then it is liable to be recovered from respondent No.9. Statutory deposit, if made by appellant,

be refunded as per Rules.

With aforesaid modification, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 27, 2017

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