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

Decided on: 7th November, 2017

\+ MAC.APP. 782/2014 & CM No. 14115/2014

NATIONAL INSURANCE COMPANY LTD ..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

SH. SATISH & ORS ..... Respondents

Through: Mr. Anil Dabas, Adv.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that had occurred on 12.10.2009 when motor vehicle bearing registration no. DL 8S NB 1807, which he was riding, was involved in a collision with an open body truck make TATA bearing no. DL 1M 0829 (the truck). The accident claim case (suit no. 335/2014) was registered on 27.10.2009 in the wake of accident information report (AIR) submitted by police on the basis of evidence gathered during investigation into corresponding criminal case registered by FIR No. 407/2009 P.S, Nangloi.

2. The tribunal held inquiry, and by judgment dated 26.05.2014, held the truck driver Veer Singh (second respondent) negligent, this, giving rise to cause for the accident. The truck was admittedly

registered at the relevant point of time in the name of Jeet Singh (owner), who is now represented by his legal heirs. The truck was insured against third party risk for the period in question with National Insurance Company Limited (insurer) which is in appeal. By the impugned judgment, the tribunal awarded compensation in the sum of Rs.11,01,459/- and directed the insurer to pay, rejecting its contention about breach of terms and conditions of the insurance policy.

3. The appeal of the insurer is pressed on the plea of breach of terms and conditions of the insurance policy on the ground that the second respondent (the driver) was not holding a valid or effective driving license for the vehicle in question. It is noted that both the owner and the insurer had led evidence on this issue, the former (owner) examining himself (as R2W1) while the latter (insurer) examining Shyam Singh (R3W1), its own official and Vinod Kumar (R3W2), an official of State Transport Authority. It is noted that the owner of the vehicle during his testimony had taken the position that he had engaged the driver after putting him to a driving test and perusing the licence which he held at that point of time which appeared to be genuine. Noticeably, he would not specify the nature of the vehicle, driving of which had been authorized by the license which had been seen by him at the time of engaging the driver. On the other hand, the insurer has shown by evidence that the license held by the driver authorized him to drive a motor cycle or a light motor vehicle (commercial). The evidence to this effect was not contested by the driver or the registered owner of the truck.

4. It appears that the tribunal did not properly deal with the question. It assumed that the plea of the insurer was that the license held by the driver was 'fake', the reference to which submission given in paragraphs 34-35 of the impugned judgment are unfounded.

5. It is not in dispute that the truck in question is a medium goods vehicle. A person who was authorized to drive a motor cycle or a light motor vehicle, may be a commercial one, could not have been entrusted with the driving of a medium goods vehicle as such license held by him would not permit him to drive such a vehicle.

6. In the above facts and circumstances, the plea of the insurer about the breach of terms and conditions of the insurance company must be accepted. It is, thus, granted recovery rights against the second respondent (Veer Singh) and also against the estate of third respondent Jeet Singh (owner).

7. By order dated 29.08.2014, the insurance company had been directed to deposit the entire awarded amount with upto interest with the Registrar General and from out of such amount seventy per cent (70%) was permitted to be released to the claimants, the balance being kept in fixed deposit account. The balance lying in the fixed deposit account shall also be released to the claimants in terms of the impugned judgment.

8. For enforcement of the recovery rights, the insurance company will have the liberty to take out execution proceedings before the tribunal.

9. The statutory amount shall be refunded to the insurer.

10. The appeal with application filed therewith is disposed of.

R.K.GAUBA, J.

NOVEMBER 7, 2017
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