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

Decided on: 12th July, 2017

\+ CM(M) 1104/2013

M/S THE NEW INDIA ASSURANCE CO LTD ..... Petitioner

Through: Mr. Pankaj Seth, Adv.

versus

SH ZAKIR HUSSAIN & ANR ..... Respondents

Through: Mr. S.R. Kamat, Adv. for R-2.

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

ORDER (ORAL)

CM No. 7619/2015

As per office note on the summons returned for 11th July, 2014, it was stated that the first respondent Zakir Hussain had died some years ago. The presence of second respondent had been secured and he has appeared through his counsel.

Heard, for the reasons set out in the application, the petition which was dismissed in default by order dated 08.01.2015, is restored to its original number.

CM(M) 1104/2013

1. Heard. Perused. The petitioner insurance company was impleaded as third respondent in the accident claim case (suit no.

634/2004), arising out of the accident that occurred on 09.05.2001 due to negligent driving of truck no. HR 29 3271 which was concededly insured against third party risk for the period in question with it. The accident had resulted in death of one Jagdish Yadav. In the contest, the insurance company raised the defence of breach of policy conditions on the ground that the driving license presented by the driver Zakir Hussain (first respondent), on verification, had been found to be fake. It relied on report (Ex.RW1/1) obtained from the regional transport officer, Haldwani. This plea was accepted and while the insurance company was directed to pay compensation, it was granted recovery rights against the said driver (first respondent) and the owner of the vehicle (second respondent herein).

2. In the execution proceedings, the second respondent moved an application claiming that there was a valid license in existence and that the recovery rights have been wrongly granted. The tribunal put this plea to inquiry by framing formal issue and calling upon the parties to lead evidence. On the basis of that short inquiry, the impugned judgment was passed on 18.12.2012, accepting the contention of the registered owner (second respondent) that there was no breach of terms and conditions of the policy.

3. It appears that from the evidence led during the inquiry it was brought out that the driving license had been obtained by the first respondent on the basis of a document which was fake. The said driving license which had been obtained, however, had been renewed from time to time, the renewal and validity having been confirmed by

the licensing authority. The obtaining of license on the basis of fake document was an act which would be illegal and also an offence punishable in law. But then, there is no evidence brought on record that the registered owner (insured) was privy to such dishonest act on the part of the first respondent. Fact remains that the transport authority through its official confirmed before the tribunal in the inquiry that the driving license for the period in question was valid and effective.

4. Having regard to the law laid down by the Supreme Court in *National Insurance Co. Ltd. vs. Swaran Singh & Ors.(2004) 3 SCC 297,* the plea of the insurance company cannot be accepted.

5. The petition is dismissed.

R.K.GAUBA, J.

JULY 12, 2017
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