

\$~R-106 & R-107 (*common order*)

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

Decided on: 10th August, 2017

+ MAC.APP. 484/2009

NATIONAL INSURANCE COMPANY LIMITED... Appellant

Through: Mr. D.K. Sharma, Advocate

versus

RAJESH DEVI & ORS.

..... Respondents

Through: Nemo.

+ MAC.APP. 485/2009

NATIONAL INSURANCE COMPANY LIMITED... Appellant

Through: Mr. D.K. Sharma, Advocate

versus

KISHAN PAL & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 24.05.2005 a motor vehicular accident took place at about 3:30 p.m. due to rash driving of truck bearing registration No.DL-1GB-2108, it being registered in the name of the third respondent and being driven at the relevant point of time by the second respondent in these connected appeals. Two persons suffered injuries in the process, they being Master Satish and Smt. Rajesh Devi, the former dying in the process. Two accident claim cases were instituted, they being

MACT Suit No.272 & 273/2005 respectively by the first respondent in these appeals.

2. In both the cases, the above-said driver and owner of the truck were impleaded as respondents in addition to the appellant insurance company (the insurer), it admittedly having issued insurance policy to cover the third party risk in respect of the said vehicle. Both cases were clubbed for inquiry on the conclusion of which they were decided by common judgment dated 03.07.2009.

3. While upholding the claim of the compensation on the principle of fault liability and awarding compensation, the liability was fastened on the insurance company (the appellant) in each case, its plea about breach of terms and conditions of the insurance policy on the basis of evidence showing driving licence of the second respondent to be fake having been rejected.

4. These appeals are pressed by the insurer only to press for recovery rights, its contention being that the fact that it had led evidence to show that the driving licence of the second respondent was fake should have resulted in a finding being returned that there was breach of terms and conditions of the policy on which basis the recovery rights deserved to be granted.

5. It is noted that the second and third respondents suffered the proceedings before the tribunal *ex-parte*. There was no contest on their behalf to the evidence led by the appellant primarily through testimony of K.K. Mittal (R3W1), Assistant Manager of the insurance company it, in turn, being based on a report (Ex.R3W1/4) issued by

District Transport Officer, Patna confirming the fact that the driving licence in question was fake.

6. Though in response to the notices on these appeals, the second and third respondents did appear, the third respondent having put in appearance through counsel, at the hearing there is no appearance on their behalf.

7. Having heard the learned counsel for the appellant, this court is of the view that the tribunal has not properly construed the evidence which was adduced before it. The evidence led by the appellant through R3W1 proved the report of the District Transport Officer to confirm that the driving licence in question was fabricated. There was no reason to disbelieve the said report. The witness had also proved that the insurance company had issued a notice (Ex.R3W1/1) under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC), both to the second and third respondents having sent it by post (postal receipt Ex.R3W1/2) calling them upon to produce before the tribunal on the date fixed (05.07.2008), *inter alia*, the driving licence of the driver of the offending vehicle. In spite of the said notices, there was no appearance or response on behalf of second and third respondents before the tribunal. As mentioned earlier, these parties had opted to suffer the proceedings *ex parte* from the very beginning, they having been served for 22.10.2005. The additional caution through notice under Order XII Rule 8 CPC at least should have impelled them to participate in the inquiry and show to the tribunal that there was no breach of terms and conditions of the insurance policy.

8. In the above facts and circumstances, it must be held that the insurance company has proved that the driving licence presented by the second respondent was a fake document. This must lead to conclusion of breach of the terms and conditions of insurance policy as there is no claim of due diligence on the part of the owner (insured).

9. Thus, the appeals are allowed. The impugned judgment, to the extent it rejected the plea for recovery rights, is set aside. Right to recover the compensation with corresponding interest paid to the first respondents in the two cases is granted in favour of the appellant against the second and third respondents, who are jointly and severally liable.

10. The statutory amount shall be refunded to the appellant insurance company in each case.

11. Both the appeals stand disposed of in above terms.

AUGUST 10, 2017

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R.K.GAUBA, J.