$~R-115

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

Decided on: 16th August, 2017

\+ MAC APPEAL No.510/2009 & CM Nos. 14676/2009, 14678/2009

SURESH KUMAR RANA ..... Appellant
Through: Mr. Praveen Kapoor, Adv.

versus

SMT. TANUJA KHATOON & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for United India Insurance co.

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

JUDGMENT (ORAL)

1. On 19.09.2000, a motor vehicular accident took place at about 11.30 p.m. in the area of Panchsheel Park, New Delhi involving negligent driving of car no. HR 55T 5319 (the car), admittedly owned by the appellant, it being insured against third party risk with the fifth respondent herein (insurer). Two persons suffered injuries in the said accident, they being Mohd. Mufees and Tabrez, the former (Mohd. Mufees) dying in the consequence. Accident claim cases including one on account of death of Mohd. Mufees (suit no. 1250/2004), came to be instituted also impleading Naresh Kumar (fourth respondent), the driver engaged by the appellant as one of the parties. The cases were contested and common inquiry was held and, by judgment dated

29.05.2009, compensation in each case was awarded, the amount directed to be paid to Tabrez being only Rs. 5,000/-. The insurance company had taken the plea that the driving licence, copy whereof had been presented and relied upon by the appellant, was not valid or effective, its investigation having shown it to be not genuine. This plea was accepted, *inter alia,* on the basis of evidence of H.L. Sharma (R3W1), examined by the insurer, it being based on report (Ex.R3W1/1) of Transport Authority, Karnal. The evidence of the appellant, he having appeared as his own witness to the contrary was rejected. Thus, the liability was fastened against the appellant and his driver. Though the insurance company was directed to pay the amounts of compensation awarded to the claimants, it was granted recovery rights.

2. By the appeal at hand, restricted to the case of compensation on account of death of Mohd. Mufees, challenge is brought to the grant of recovery rights, reliance being placed on *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297.

3. The tribunal has given sound reasons for rejecting the contention of the appellant with regard to exercise of due diligence. He had referred to verification of the driving license through his nephew Krishan Kumar, who was not examined. There is no report taken from the Transport Authority, Karnal to counter the version presented by the insurer through the testimony of R3W1. The report (Ex.R3W1/1) bears the endorsement by the Transport Authority, Karnal that the driving licence was not genuine, no such licence

having been issued by the said authority. There is nothing on record from which the correctness of the said report could be doubted.

4. In above facts and circumstances, the appeal is devoid of substance and it with pending applications is dismissed.

5. The statutory deposit made by the appellant would be released in favour of the insurer to partly satisfy its claim under the recovery rights.

R.K.GAUBA, J.

AUGUST 16, 2017
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