

\$~R-121

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

Decided on: 18th August, 2017

+ **MAC APPEAL No. 523/2009**

J.N. SHARMA Appellant

Through: **Mr. Manish Maini, Adv.**

Versus

MADAN LAL & ORS. Respondents

Through: **Mr. Shoumik Mazumdar for**
Mr. Pankaj Seth, Adv. for R-7.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant is the registered owner of bus bearing registration no. DL 1P 1962 (the bus) which was involved in a motor vehicular accident that occurred on 13.10.1996 resulting in death of one Smt. Kamlesh, giving rise to cause of action for accident claim case (suit no. 1038/2008) being filed by first to fifth respondents (collectively, the claimants). It is now undisputed that the bus at the relevant time and date was driven by sixth respondent, it being admittedly insured against third party risk with seventh respondent.

2. The tribunal, after inquiry, granted compensation in favour of the claimants directing the insurance company to pay, but also

granting it recovery rights against the appellant herein, for the reason that the driver did not hold a valid or effective driving licence on the crucial date when the cause of action had arisen.

3. The appeal at hand seeks to assail the above view taken by the tribunal.

4. It is noted that the evidence before the tribunal proved that the driver had a valid driving licence initially issued on 12.08.1992 for a motorcycle but the same was converted into one for heavy transport vehicle w.e.f. 20.05.1993. This licence would have been valid for three years. The renewal, however, came only on 05.11.1996. This would mean for about five months, the driver did not hold a valid driving licence, the accident occurring during the interregnum.

5. Technically, the contention is correct that the driver did not hold a valid or effective driving licence. But, the rule of main purpose and concept of fundamental breach applies. The fact that the driver had a driving licence sometime prior to the accident and that he had been granted licence immediately after the event shows that he was not disqualified. There is nothing shown from the material on record that the absence of licence had contributed to the cause for accident. (See MAC Appeal No. 1042/2016 titled *Oriental Insurance Co. Ltd. vs. Deepa & Ors.*, decided on 11th August, 2017).

6. The appeal is allowed. The impugned judgment to the extent recovery rights were thereby granted against the appellant is set aside.

7. By order dated 27.10.2009, the appellant had been directed to deposit the amount of Rs. 2,77,000/- with the Registrar General of this

Court, which was ordered to be kept in fixed deposit. The said amount shall now be refunded with statutory amount to the appellant.

R.K.GAUBA, J.

AUGUST 18, 2017

nk

