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

Decided on: 7th July, 2017

\+ MAC APPEAL 848/2014 & CM Nos. 10150/2017 (delay), 15351/2014 (stay)

IRFAN AHMAD ..... Appellant

Through: Ms. Ashim Vachher, Mr. Pawash Piyush, Ms. Geetika Sharma & Mr. Sumeet, Advs.

versus

NATIONAL INSURANCE CO. LTD & ORS ..... Respondents

Through: Ms. Neerja Sachdeva, Adv. for R-1.

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

<u>JUDGMENT (ORAL)</u>

1. On 19.03.2010, a motor vehicular accident occurred, statedly involving rash or negligent driving of Tata Indica car bearing registration no. UP 16R 9587 (the offending vehicle). As per the evidence on record, the said vehicle was driven by one Santosh Kumar, son of Jaswant Singh. The offending vehicle was owned by Irfan Ahmed, son of Rizwan Ahmed (appellant herein), it being concededly insured against third party risk for the period in question with National Insurance Company Ltd. (first respondent herein). Two persons are stated to have been injured in accident, they being Asghar Khan & Abhishek Chaurasia. The former died in the consequence. The legal heirs of Asghar Khan took out accident claim case (petition

no. 355/2010) while Abshishek Chaurasia instituted another accident claim case (suit no. 378/2010). In both the claim cases, the driver, owner and insurer of the offending vehicle were impleaded as respondents. The insurance company alleged breach of policy conditions by pointing out that the driving license relied upon by the driver, upon verification, had been found to be fake. This contention was upheld on the basis of evidence adduced and while the insurer was called upon to initially pay the compensation, it was granted recovery rights against the appellant (registered owner) of the vehicle.

2. The registered owner has come up with this appeal assailing such directions in both judgments. Though filing of common appeal against two different judgments in two different claim cases was not correct, given the fact that this was not noticed at the inception and three years have passed by, it will not be proper now to regulate the parties to the initial stage by insisting on splitting up of the two appeals. The registry must check such irregularity at the time of filing.

3. What is pointed out by the appellant is that reliance had been placed on a driving license bearing no. 3882/KNJ/2007 issued by the transport authority at Kannoj (UP). It is stated that this was a valid driving license. Copy of the said license has been submitted at page 63 of the paper book. It reveals that it is in the name of Satendra Katiyar, son of Jaswant Singh Katiyar. It is the submission of the appellant that Satendra Katiyar is another name of driver Santosh Kumar.

4. The insurance company in its effort to prove that the above said license was fake had moved an application in the tribunal, ahead of hearing on 15.11.2011, seeking summoning of the licensing authority at Kannoj UP with respect to driving license 3887/KNJ/07 dated 12.09.2007. Evidence in such regard came on record in the form of document Ex.R3W2/B, it pertaining to license number 3887/KNJ/2007.

5. Apparently, the number of license respecting which the evidence was led by the insurance company differs from the one of the license relied upon by the appellant and his driver it being 3882/KNJ/2007. The tribunal went by the evidence adduced by the insurance company and returned finding against the appellant.

6. The appellant insists that the license relied upon by him as referred to above is a genuine license. If the fact were to be held proved, it would relieve the registered owner of its responsibility to pay, shifting the responsibility on to the insurer to indemnify.

7. Undoubtedly, the appellant was guilty of neglect in proper prosecution of his defence. He did not take effective steps at the time of inquiry before the tribunal. He contends that it was the counsel engaged by him who did not discharge his professional responsibility properly. Be that as it may, it was also the burden of the appellant to ensure that his version was brought before the tribunal at the appropriate stage. Delay consequently has occurred.

8. While this appeal was entertained, by order dated 17.09.2014, the appellant was directed to deposit twenty five percent (25%) of the awarded amount with accumulated interest with the Registrar General

of this court and upon such condition being satisfied the enforcement of the recovery rights was to stand stayed. The amount thus deposited with UCO Bank, Delhi High Court Branch was kept in fixed deposit receipts for one year with provision of auto renewal.

9. In view of the above facts and circumstances, the proper course would be to give one more opportunity to the appellant to prove the genuineness of the document he relies on. The short inquiry required to be undertaken for this purpose is remitted to the tribunal where the appellant and the insurer shall appear on 9th August, 2017.

10. In the given fact-situation, the amount deposited by the appellant shall presently be retained in fixed deposit receipt by the tribunal. For this, the Registrar General shall take necessary steps to transfer the said fixed deposit receipt to the control of the tribunal. The tribunal shall make endeavour to take a decision after affording opportunity to both sides to lead evidence on the above issue at an early date and deal with the amount deposited in accord with the decision rendered. Needless to add, if the contention of the appellant were to be upheld, the amount deposited with accumulated interest would have to be refunded. Conversely, if the contention were to be rejected, the appellant would continue to be liable to reimburse the compensation paid by the insurer in terms of judgment of the tribunal.

11. The statutory amount shall be presently retained, to be disbursed after the decision has been rendered in above inquiry by the tribunal, and in its accord.

R.K.GAUBA, J.

JULY 07, 2017/nk