$~R-661&662

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th December, 2017

\+ MAC.APP. 1200/2012

NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

NARESH KUMAR & ORS. ..... Respondents

Through: None.

\+ MAC.APP. 1202/2012

NEW INDIA ASSURANCE CO. LTD. ….Appellant

Through: Mr. Pankaj Seth, Adv.

RISHABH & ORS. …..Respondents

Through: None.

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

JUDGMENT (ORAL)

1. On 18.12.2008, a motor vehicular accident took place involving negligent driving of a motor vehicle described as motor cycle bearing registration no. DL-6S-U-2053 (motor cycle), it resulting in injuries being suffered by two persons namely, Jyoti and her one and half

years' old child Rishabh. Jyoti died as a result of the injuries sustained. The two accident claim cases came to be instituted on 21.02.2009, one (suit no. 544/2011/2009) for compensation on account of death of Jyoti and the other (suit no. 245/2010/2009) for injuries suffered by minor child, Rishabh. Both cases were clubbed for inquiry by the tribunal and, by judgment dated 10.07.2012, the tribunal returned findings that the accident had occurred due to the negligence on the part of motor cycle rider Mahesh, a respondent in these appeals. It awarded compensation in each case and fastened the liability to pay on the said driver Mahesh and Bimla (registered owner of the motor cycle), she also being a respondent in these appeals. The motor cycle was admittedly insured against third party risk for the period in question with the appellant (insurer). The insurer in the course of its contest in the said two cases had taken the plea that there was a breach of terms and conditions of the insurance policy as the driver Mahesh was not holding a valid and effective driving licence at the relevant point of time. It led evidence by examining Kiran Gupta (R1W1), its Assistant Manager and M. Jayanta Singh (R1W2), the investigator. The tribunal, however, was not impressed with the said evidence and held that the insurer had not discharged the burden of proof upon it in respect of its plea about the driver not holding a valid and effective driving licence. The liability to pay the compensation in each case was thus, fastened on the insurer.

2. By these appeals, the insurer reiterates the above said plea and presses for recovery rights.

3. Both the driver (Mahesh) and Bimla, (the registered owner of the motor cycle) though having been served, have failed to appear to assist at the time of hearing on these appeals. The learned counsel for the insurer has been heard and record perused.

4. In the context of a document purporting to be the driving licence of the above mentioned driver (bearing no. 24355/BPR) indicating it to have been issued by the District Transport Office at Bishnupur District, Manipur, it has been proved by R1W1 by verification report (Ex-R1W1/3) of its investigator (R1W2), it *inter alia* being based on report of District Transport Authority Officer of the Government of Manipur, District Bishnupur, that no such licence had been issued in such name, the document being fake. The evidence of R1W1 was contested by the registered owner (a respondent before the tribunal) and was cross-examined by her counsel with a vague suggestion that the investigator had not carried out a proper investigation for the genuineness of the document, it only being elicited that the report of the District Transport Office has been given on the private letter head of the investigator and not on Form 54. Noticeably, there was not even a remote suggestion that the licence was genuine.

5. The insurer examined R1W2 on 25.01.2012 to prove the report obtained from the District Transport Officer, Vishnupur at Manipur to

which there was no contest put in by either the registered owner or the driver of the motor cycle.

6. R1W1 during the course of her testimony had proved that the insurer had issued a notice under Order XXII Rule 8 of the Civil Procedure Code (Ex-R1W1/6) which had been sent by post (Ex-R1W1/7) calling upon the registered owner of the motor cycle to produce the driving licence of the motor cycle rider. There is no contest to her evidence showing that the notice was sent at the correct address and leading to the inference that in due course, it would have been delivered. There is no explanation given as to why there was no response to the said notice by the registered owner of the motor cycle. It is pertinent to add here that neither the driver nor the registered owner of the motor cycle rider have led any positive evidence to prove the existence of an effective driving licence held by the said driver at the relevant time.

7. In light of the above facts and circumstances, the conclusion reached by the tribunal so as to deny grant of recovery rights to the insurance company cannot be upheld. The insurer had taken all the necessary steps within its control to prove that the document relied upon was not a genuine one. It was the burden of the driver or owner of the motor cycle to lead positive evidence to the contrary which they have failed to adduce. No such document has been submitted even during the pendency of these appeals till date. The only conclusion that can be drawn is that they had no valid or effective driving licence to show.

8. On the foregoing facts and in the circumstances, the appeals are allowed. Recovery rights are granted against Bimla (registered owner of the motor cycle) and Mahesh (the driver) and in favour of the insurance company in each case. For enforcement of such rights, the insurance company may take out appropriate execution proceedings before the tribunal.

9. The statutory deposits shall be refunded.

10. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 7, 2017
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