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

% *Decided on: 22th May, 2017*

+ **MAC.APP. 651/2016 & CM Nos. 30355, 30357 & 34590/2016**

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mrs. Suman Bagga and Mr. Pankaj Gupta, Advocates.

Versus

SAVITA & ORS.

..... Respondents

Through: Mr. Sanjiv Kumar, Advocate for Respondent No.2.

+ **MAC.APP. 683/2016 & CM Nos. 31477 & 31479/2016**

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mrs. Suman Bagga and Mr. Pankaj Gupta, Advocates.

Versus

SAVITA & ORS.

..... Respondents

Through: Mr. Sanjiv Kumar, Advocate for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals under section 173 of the Motor Vehicles Act, 1988 impugn the common Award dated 29.01.2016 passed in Suit No. 248/09 and

236/11 awarding compensation of Rs.11,37,567.60/- and Rs.3,25,000/- with interest at the rate of 9% per annum to the beneficiaries of the Award respectively in each appeal, for the fatal injuries suffered on account of the motor vehicle accident. The vehicle was insured with the appellant, hence the liability has been fixed on it.

2. The appeals do not challenge the quantum of the compensation but the fixation of liability on the insurer without any determination apropos the right of recovery against the owner and the driver.

3. On 21.12.2016, this Court had recorded that the respondent No.3/owner of the vehicle was served on 23.10.2016 but none appeared. Respondent No.2/driver was represented by a counsel, who had sought time to address arguments.

4. The insurer had contended that the driver did not possess a valid driving licence. Their investigator had filed a report and also deposed that no such driving licence had been issued by the RTO Narnaul, Haryana. The issue apropos validity of the driving licence was addressed by the Tribunal as under:-

“16. It is submitted by Id counsel for respdt no.3 that his client is not liable to pay compensation, as respdt no.1 was having a fake licence and this fact has been proved on file. Sh. Jitender Dhabhal (R3W1) stated to be Manager of respondent no. 3 filed affidavit in evidence. According to this witness, a notices U/o 12 rule 8CPC were sent to driver and owner of offending vehicle but no reply was filed. Sh. Ajit Pal Singh as R3W2 is also an employee of respondent no. 3. It is sworn on oath by this witness in his affidavit that he visited office of RTO Narnaul to verify driving licence in the name of respondent no. 1. It was disclosed to him that no such driving licence was issued in the name of Pradeep (respondent no. 1). His report is Ex.R3W1/5.

17. *Even if, it is presumed that a legal notice U/o 12 rule 8 CPC was dispatched to said respondents and they did not file any reply. It does not raise necessary presumption that respondent no. 1 was having no driving licence. Respondent no. 3 did not summon record from office of licencing authority concerned to prove that no driving licence was issued to respondent no. 1, as relied upon by latter. Even then, respondent no. 3 will be free to initiate action against insured i.e. owner or driver if it thinks that respondent no. 1 had no valid driving licence and this fact was well within the knowledge of owner i.e. respondent no. 2. This issue is thus decided in favour of petitioners and against the respondents.”*

5. The learned counsel for the appellant submits that the non-summoning of the records of the Licensing Authority was an error and the proper procedure was not adopted, however, its effect should not be so precipitously visited upon the appellant so as to deprive it of the rights of recovery against the owner and driver of the motor vehicle. She further submits that the appellant may be granted an opportunity on such terms which may be considered appropriate by this Court.

6. In the claim petition the compensation has been awarded and is not challenged. The insurer will pay the compensation apropos third parties, as awarded. The primary objective of providing relief to victims of motor accidents has been achieved. However, the actual tort-feasor must be determined and held accountable. The insurer's lapse in not summoning of the records from the Licensing Authority would keep the truth buried forever. This anomaly can be rectified by according the insurer another occasion to summon the relevant records so that justice is done. In the circumstances, the Court thinks it just and fair that the cases be remanded

back to the Tribunal concerned to decide afresh the issue of validity of the driving license. It is so ordered, subject to payment of costs of Rs.45,000/- and Rs.25,000/- respectively, to be deposited with the Delhi High Court Legal Services Authority within two weeks, the impugned order is modified to the extent that the issue of validity of the driving licence claimed by respondent No.2 shall be determined by the Tribunal concerned in accordance with law. The parties shall appear before it on 10.07.2017. The learned counsel for the parties submit that they will properly and fully assist the Tribunal on each date whenever the case is listed and shall not ask for any adjournment whatsoever.

7. The insurer had already deposited the awarded amount alongwith interest at the rate of 9% per annum with the Tribunal. The amounts so deposited by the appellants shall be released, if not already done, to the respective beneficiaries in terms of the Award. Should there be any shortcoming in satisfying the Award, the appellant shall make good the same. The statutory deposits shall be refunded to the appellant.

8. The appeals alongwith pending applications stand disposed off in the above terms.

NAJMI WAZIRI, J.

MAY 22, 2017

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