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

+ **FAO 135/2015**

NEW INDIA ASSURANCE CO LTD Appellant

Through: **Mr. Ravinder Singh and Ms.
Raveesha Gupta, Advocates**

versus

SACHIN GUPTA & ORS Respondents

Through: **Mr. Ajandra Sisodia and Mr. Pankaj
Tripathi, Advocates for respondent
No.1**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **22.08.2017**

1. The appellant has challenged the order dated 11th March, 2015 whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.2,71,120/- along with interest @ 12% per annum to respondents No.2 to 4. The appellant is seeking recovery rights to recover the aforesaid amount from respondent No.1.

2. Learned counsel for the appellant urged at the time of the hearing that the driver of the insured vehicle was not holding a valid driving licence at the time of the accident and, therefore, the appellant is entitled to recovery rights against respondent No.1. It is submitted that the appellant examined its administrative officer as R2W-1 to prove the report of the investigator. It is submitted that the driving licence of the driver was valid upto 21st July, 2003 and was not renewed thereafter as per the report of the investigator. It is submitted that the Commissioner, Employees' Compensation has discussed the contentions of the appellant in para 7 but has not recorded any

finding in respect thereof

3. Para 7 of the impugned order is reproduced hereunder:

“7. Sh. Ashok Kumar Gond, Administrative Officer Ex.R2W1/1 appeared as a witness and filed his statement/evidence by way of affidavit in which it is contended that being the Administrative Officer Legal Deptt. Of Respondent No.2 is competent to swear this affidavit. Further contended that vehicle in question was insured with Respondent No.2 vide policy No.321905/31/05/01/00004009 for the period 14.01.2006 to 13.01.2007 (Mid Night). As per report of Investigator Sh. Ajay Kumar Jain, after verification driving license of deceased Sh. Ishwar Chand bearing No.I-331/SRE/91 (Old No.I-516 (SRE)/81 dated 22.07.1981 was issued by Licensing Authority Saharanpur (U.P.). The said driving license was not renewed after 21.07.2013 by Licensing Authority, Motor Vehicle Deptt., Sarahanpur (U.P.). It is further contended that alleged incident was occurred on 03.10.2006 and driving license of deceased was not renewed after 21.07.2003 meaning thereby the deceased/driver was not driving the said vehicle without having valid and effective driving license on the date of alleged accident. In this regard notice was issued to the owner of the vehicle through advocate Ms Neeru Garg by Regd. Post and the same was duly served upon the respondent. Since the owner of the vehicle violated the terms and condition of the policy and handed over/allowed a person to drive the vehicle who not having any valid and effective driving licence who drive the vehicle at the time of accident, therefore Respondent No.2 i.e. The New India Assurance Co. Ltd. is not liable to pay compensation to the petitioner. Affidavit supported by document Ex.: R2W1/A to R2W1/H i.e. policy schedule cum certificate of insurance, report of verification of driving license, accident information report, driving license, notice sent to petitioner through advocate, acknowledgement receipt. He was also cross examined by counsel for petitioner.”

4. Learned counsel for respondent No.1 submits that no issue was framed with respect to the appellant's claim of recovery rights.

5. Since the Commissioner, Employees' Compensation has not given any finding with respect to the claim of recovery rights made by the appellant, this Court is of the view that it would be appropriate to remand this case back with respect to the appellant's claim for recovery rights.

6. In the facts and circumstances of this case, the award by the Commissioner, Employees' Compensation directing the appellant to pay compensation of Rs.2,71,120/- along with interest @ 12% per annum to respondents No.2 to 4 is upheld. However, the appellant's claim for recovery rights against respondent No.1 is remanded back to the Commissioner, Employees' Compensation. The appeal is allowed in above terms.

7. The following additional Issue No.3 is framed:

“3. Whether the appellant is entitled to recovery rights against respondent No.1?”

8. The Commissioner, Employees' Compensation shall adjudicate and pass a fresh order on the additional Issue No.3.

9. Respondent No.1, who was *ex parte* before the Commissioner, Employees' Compensation, is permitted to contest the claim on merits subject to cost of Rs.5,000/- to be paid by the respondent No.1 to the appellant before the Commissioner, Employees' Compensation.

10. The parties shall appear before the Commissioner, Employees' Compensation on 21st September, 2017.

11. The record of the Commissioner, Employees' Compensation be returned back forthwith.

12. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

AUGUST 22, 2017/rsk