$~R-145

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

Decided on: 28th August, 2017

\+ MAC.APP. 621/2009

GURCHARAN SINGH ... Appellant

Through: Nemo.

versus

NATIONAL INSURANCE COMPANY LIMITED & ORS. ..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-1.

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

JUDGMENT (ORAL)

1. The appellant is the registered owner of the bus bearing registration No.DL-1PB-5177, the negligent driving of which, by the second respondent resulted in a motor vehicular accident that occurred on 08.07.2005 at about 9:15 a.m. involving collision against scooter bearing registration No.DL-3SD-0247 resulting in death of its rider Ramesh, giving rise to cause of action for accident claim case (Suit No.470/2005) being instituted by his wife and other members of the family dependent upon him, it resulting in judgment dated 17.07.2008 whereby the award of compensation was granted, the liability to pay initially having been fastened on the first respondent, it concededly being the insurer of the bus against third party risk for the relevant period. However, the tribunal accepted the plea of the first respondent

about the breach of terms and conditions of the insurance policy, this having regard to the evidence led through Arvind Kuamr (R3W1) and Ram Lal (R3W2), the former an official of the Transport Authority at Firozabad, U.P. and the other an official of the appellant insurance company, the evidence collectively read showing that the second respondent had presented the document in the name of driving licence, which upon verification was found to be fake, the registered owner (the appellant) having failed to respond to notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) whereby it had been called upon by the insurance company to produce all the relevant documents including the driving licence. On the basis of such finding, recovery rights were granted to it against the appellant.

2. It appears the appellant had taken exception to the execution proceedings taken out by the insurance company for enforcement of the said recovery rights by submitting application contending that such recovery can be made only by way of separate civil suit, the objection having been repelled by the tribunal by order dated 12.11.2009.

3. By the appeal at hand, the recovery rights were challenged on the ground that the appellant had taken all the necessary precautions while engaging the second respondent as driver as his driving licence has been examined through one "Mishra ji" and, therefore, the insurance company should be held liable to indemnify without demur.

4. It is noted from the tribunal's record that the appellant had examined himself as R2W1 to testify to the above effect. But then, the cross-examination remained inconclusive on 13.08.2007 when his

testimony was recorded, it having been deferred requiring him to produce copy of the driving licence, which he was statedly in possession. Instead of complying with the said direction or offering himself for the further cross-examination, the appellant chose to remain absent from further proceedings thereafter till the case was decided. There is no explanation worth the name either in the objections taken out during the execution proceedings, or in the appeal presented before this court, for such evasion.

5. Since the contesting insurance company did not have full opportunity for completion of the cross-examination, the part testimony of the appellant (R2W1), cannot be treated as evidence which could be considered.

6. In the result, the appeal must fail. It is dismissed.

7. The insurance company will have the liberty to prosecute the enforcement of the recovery rights to their logical end.

8. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 28, 2017
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