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

Decided on : 28.08.2017

\+ MAC.APP. 958/2014

DALIP CHAND ..... Appellant

Through: Ms. Sonia Sharma and Mr. Krishan Kumar, Advocates with appellant in person

versus

THE ORIENTAL INSURANCE COMPANY LTD. & ORS ..... Respondents

Through: Mr. Tarkeshwar Nath and Mr. Onkar Nath, Adv for R-1with Mr. Pradeep Kumar Kaushik, Assistant Manager.
Mr. R.C.S. Bhadoria, Adv. for R-2

\+ MAC.APP. 959/2014

SHRI DALIP CHAND ..... Appellant

Through: Ms. Sonia Sharma and Mr. Krishan Kumar, Advocates with appellant in person

versus

THE ORIENTAL INSURANCE COMPANY LTD. & ORS ..... Respondents

Through: Mr. Tarkeshwar Nath and Mr. Onkar Nath, Adv for R-1 with Mr. Pradeep Kumar Kaushik, Assistant Manager.
Mr. R.C.S. Bhadoria, Adv. for R-2

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

JUDGMENT (ORAL)

1. These appeals are by the registered owner of the motor vehicle, the negligent driving of which is stated to have given rise to the cause of action for two claim petitions being instituted, the challenge here being to the recovery rights having been granted in favour of the insurance company by judgment dated 27.04.2010.

2. On 30.05.2004, at about 7.00 a.m. a motor vehicular accident occurred involving collision between two vehicles, one, a motorcycle bearing registration no.DL-7S-AA-4128 (motorcycle) and, the other, a truck bearing registration no.HR-38E-8404 (the truck) in the area of Noida Flyover within the jurisdiction of police station Pandav Nagar, Delhi. The motorcycle was driven by Harish Kumar Rastogi, his wife Kanti Devi travelling with him on the pillion. As a result of the collision, both fell down and sustained injuries.

3. Two accident claim cases (suit nos.240/2004 and 243/2004) were instituted, one by Kanti Devi and the other by Harish Kumar Rastogi. In each case, Shammi Mohd. was described as the driver of the truck, he being the second respondent in these appeals. The appellant was impleaded by the claimants as second respondent in the claim petitions, his description being of the registered owner of the truck with further averments that the truck was insured against third party risk for the relevant period with Oriental Insurance Company Ltd. (the insurer), it now being the first respondent in these appeals.

4. The claim cases were contested by the above said driver and owner (the second respondent and the appellant respectively), by a joint written statement, denying the involvement, or negligence but

affirming the case of the claimant(s) that the truck was covered by an insurance policy against third party risk taken out from the said insurer. The insurer filed identical written statements confirming (in reply to para 17 of the claim petitions) that the truck was insured against third party risk under policy bearing no.233605/2004/1723 for the period 07.08.2003 to 06.08.2004, the only plea in defence being to the effect that the benefit thereof could not be taken unless it was proved that the driver was holding a valid or effective driving licence.

5. Both the claim petitions were put to inquiry by the Motor Accident Claims Tribunal (Tribunal). It appears that during the pendency, the appellant and the driver would not appear regularly, their presence being recorded on some of the dates. The insurer, however, led evidence by examining Ratan Lal (R3W1) on 15.04.2010 and, through him, a copy of the insurance policy (Ex. R3W1/1) was proved, it having been issued in the name of M/s. Libra Finance and Carriers Pvt. Ltd. The insurer raised a defence at that stage that there was breach of the terms and conditions of the insurance policy since the vehicle was not covered by a valid permit and, in order to prove this contention, reliance was placed on notice dated 27.01.2010 (Ex. R3W1/2) addressed by it to the said M/s. Libra Finance and Carriers Pvt. Ltd. calling it upon to make available copy of the permit in respect of the place of accident. The copy of the notice proved by the same very witness is shown by evidence to have been put in postal transit vide postal receipt (Ex.R3W1/3). The witness of the insurer (R3W1), proved on record that there was no response to the notice by M/s. Libra Finance and Carriers Pvt. Ltd.

6. The Tribunal, while accepting the claim for compensation of the first respondent in these appeals, by judgment dated 27.04.2010, also accepted the contention of the insurer about breach of the terms and conditions of the insurance policy holding that the vehicle was without a valid permit and, therefore, it was granted recovery rights against the appellant.

7. The appellant became alive to the grant of recovery rights adverse to his interests when the insurance company took out execution applications. During such proceedings, applications came to be moved by him under Order XXI Rule 26 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) on 04.07.2011 on the grounds that the necessary documents had been made available and that the insurance company had never demanded a copy of the permit. On this plea, while seeking interim relief in the nature of stay, the appellant also sought dismissal of the execution proceedings.

8. It appears from the record that the tribunal entertained the aforesaid applications treating them as objections and allowed evidence to be adduced. It further appears that, by an interim order dated 18.07.2012, while the matters were still at the stage of evidence of the objector (the appellant herein), the tribunal lifted the stay initially granted against execution of the attachment warrants. This became subject matter of challenge through CM (M) 935/2012 which was allowed, by a learned single Judge of this court, by order dated 22.08.2012. The enforcement of the execution award was stayed till the objector (the appellant herein) had led evidence and the objections had been adjudicated upon.

9. During the execution proceedings, the appellant examined two witnesses, they including Rakesh Rana (OW-1) and Mukesh Sehrawat (OW-2), both officials from the office of the Regional Transport Officer, Faridabad, Haryana. The evidence of the said witnesses, which was subjected to cross-examination on behalf of the insurance company, read together, brought out clearly that the permit in respect of the truck in question had been originally issued in favour of M/s. Libra Finance and Carriers Pvt. Ltd. and that it was subsequently transferred / endorsed in the name of the appellant herein. OW-2 was categorical in proving the fact that the permit in respect of the truck in question in the name of the appellant was valid for the period 08.01.2003 to 07.01.2008 which would concededly cover the date of the accident.

10. The Tribunal, however, by its order dated 20.08.2014, which governs identical objections filed in both the execution petitions (Execution case no.18 & 19/2011), rejected the contentions of the appellant primarily for the reason that the copy of the permit had not been produced at the relevant stage before the *"court"* (tribunal), particularly when the appellant had been called upon to do so by notice under Order XII Rule 8 CPC. The Tribunal also accepted the objection of the insurer that the appellant had "*never intimated the transfer of vehicle*".

11. These appeals have been filed challenging the common judgment dated 27.04.2010 of the tribunal primarily contending that the vehicle had been purchased by the appellant from M/s. Libra Finance and Carriers Pvt. Ltd. which had taken out the insurance

cover and that, after the said purchase, the insurance policy had also been transferred by the insurance company, on request of the appellant, in his name, a copy of the insurance policy transferring the insurance cover in his name having been submitted as Annexure A3 (pages 81-83 of the paper books).

12. The evidence led by the appellant, during the inquiry into objection proceedings, brought out that a valid permit existed in his name covering the date of the accident. Against the above backdrop, the fate of these appeals hinged only on the issue as to whether the insurance company had transferred the insurance policy from the name of M/s. Libra Finance and Carriers Pvt. Ltd. to the name of the appellant, and if so, on which date.

13. These appeals were heard against the above factual matrix on 16.08.2017 when the order (to the extent relevant) to the following effect was passed :-

> *"3. By the impugned judgment dated 27.04.2010, common to both these appeals, the tribunal has accepted the evidence of the first respondent (insurer), led through Rattan Lal (R3W1), its record keeper, that the insurance policy (Ex. R3W1/1) stood in the name of M/s. Libra Finance and Carriers Pvt. Ltd. and that inspite of notice (Ex. R3W1/2), copy of the permit, valid and effective for the relevant date and place, was not produced and in the consequence has granted recovery rights against the appellant. The case of the appellant is that a valid permit existed in its name in which regard evidence was led by it through Rakesh Rana (OW-1) and Mukesh Sehrawat (OW-2), officials of Regional Transport Officer, Faridabad, Haryana. It is also the contention of the appellant that the insurance policy and the permit,*

originally issued in the name of M/s. Libra Finance and Carriers Pvt. Ltd., stood transferred in his name, copy of the transferred policy having been submitted with these appeals (pages 81-83).

4. In above facts and circumstances, the most opportune way to reach out to the facts would be by calling upon both the appellant and the insurer to discover the necessary facts on oath. Both are directed to do so within a week of this order.

5. Given the old pendency of these matters, it is made clear that there shall be no enlargement of time claimed by any side or entertained by this court. In case of default, adverse inference would follow.

6. The appellant and the authorised representative of the insurance company whose affidavits are filed shall remain present, in person, with original records on the next date of hearing.

7. Be listed on 28th August, 2017."

14. Both parties did not comply with the directions within the time specified. However, at the hearing the appellant submitted his affidavit sworn on 18.08.2017 which was handed over at the hearing through counsel, it being placed on the file of MACA 958/2014. With the said affidavit, the original transferred insurance policy has been made available. On the other hand, the counsel for the insurer appeared with Mr. Pradeep Kumar Kaushik, Assistant Manager and handed over, at the hearing, an affidavit sworn by him, it also being placed on the file of MACA 958/2014. By the affidavit of the representative of the insurer, the act of issuance of the transferred

insurance policy in the name of the appellant has been admitted, reference in this context being made to its copy at page 81 of the paper book of the appeal.

15. There is substance in the above-said claim, in that the copy of the said insurance policy in the name of the appellant had been taken over by the investigating police officer and made available to the claimants, a copy thereof having been submitted with the claim petitions (as per index dated 23.07.2004), the specific document being part (at page 127) of the record of the tribunal pertaining to the claim petition of Harish Kumar Rastogi.

16. The issue as to who was the registered owner of the vehicle and as to in whose name the insurance policy existed on the relevant date has been mis-handled by the insurance company as indeed by the tribunal. The written statement filed by the insurance company was in answer to claim petitions which clearly mentioned the name of the appellant herein (impleaded as the second respondent) as the registered owner. The insurance company did not take exception to the said description and never came up with the pleadings that the vehicle stood in the name of some other entity (M/s. Libra Finance and Carriers Pvt. Ltd.). By necessary implication the factum of insurance cover in the name of the second respondent in the claim proceedings stood admitted. The issue as to whether the vehicle was in the name of the appellant, thus, was never required to be put to inquiry. Yet, the insurance company was permitted to lead evidence against its own pleadings. This caused undue distraction or digression. The insurance company having issued the transferred insurance

policy, led evidence to bring about an impression that the insurance policy which had been issued in respect of the truck covered only the risk of M/s. Libra Finance and Carriers Pvt. Ltd.. This amounted to concealment of the factum of transfer which is wholly unacceptable and unpardonable.

17. The tribunal accepted the evidence of R3W1 while granting recovery rights failing to note that the notice (Ex. R3W1/2) was not even addressed to the second respondent (the appellant herein) who, as per the pleadings on record, was the registered owner of the vehicle. A bare perusal of the pleadings and closer scrutiny of the evidence would have impelled the tribunal to ask for clarity on the subject and such further scrutiny would possibly have immediately brought out complete facts on record.

18. Even while inquiring into the objections, the tribunal failed to come up to the task. It went into the issue from a perspective which was uncalled for. It wrongly assumed that the insurer had led evidence to the effect that notice under Order XII Rule 8 CPC had been issued to the appellant. The solitary witness examined by the insurer (R3W1) had never spoken of any such statutory notice to the appellant. On the contrary, the evidence only showed that a notice had been issued to M/s. Libra Finance and Carriers Pvt. Ltd., which was not even a party to the claim petitions.

19. From the above noted facts and circumstances, it is clear that the finding of breach of the terms and conditions of the policy has been wrongly returned by the Tribunal. The motor vehicle having been transferred in his name at his request, the insurance policy

having been similarly transferred, the appellant had also secured the requisite permit for the vehicle. In this view, the insurer cannot deny its liability to indemnify.

20. Given the harassment that has been caused to the appellant on account of concealment of the crucial fact that the insurance policy had been transferred from the name of M/s. Libra Finance and Careers Pvt. Ltd. to the name of the appellant, leading to he being burdened with liability under recovery rights, notice under Order XII Rule 8 CPC having been issued, for no explicable reasons, to a party which, to the knowledge of the insurance company, was left with no subsisting interest in the vehicle, the impugned judgment and the order whereby recovery rights were granted against the appellant in favour of the insurer are set aside, and the appeals are allowed each with punitive costs of Rs.1,00,000/- (Rupees One Lakh) to be paid by the insurance company to the appellant.

21. The costs imposed against the insurer as above shall be paid by requisite deposits with the tribunal within 30 days whereupon it shall be released to the appellant. In case of default, the appellant will have the liberty to take out appropriate proceedings to have it recovered in accordance with law.

22. The statutory deposit(s) made by the appellant shall be refunded.

23. The appeals stand disposed of in above terms.

R.K.GAUBA, J

AUGUST 28, 2017/yg