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

\+ MAC.APP. 760/2016 & CM Nos. 34127/2016 & 34233/2016

AMARJEET SINGH ..... Appellant

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advs.

versus

HDFC ERGO GEN INS CO LTD & ORS ..... Respondents

Through: Mr. Priyadarsi Acharya, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 20.04.2017

1. This appeal impugns the Award dated 09.06.2016 of the MACT, Saket Courts, New Delhi in Suit No. 123/2014. The insured vehicle was involved in an accident resulting in the loss of life of one Mr. Ram Dular Jayaswal. A compensation of Rs. 24,00,000/- with interest @ 9% p.a. was awarded to the kin of the deceased. The insurance company had disputed the claim on the ground that there was a breach of the conditions of the insurance policy, in as much as the insured vehicle was being driven by a driver who did not possess a valid driving license. It drew strength from the report of the Investigating Officer that the driving license issued from the Agra Transport Authority was fake.

2. In his written statement the appellant, who was respondent no.2 before the Tribunal, had stated "*That the Driver/ Respondent No. 1 of the offending vehicle is also having the valid license at the time of alleged accident which is issued from the FARUKHABAD, U.P.*" In view of this

contention the Tribunal had, on 25.05.2015, directed the IO to get the Licence No. 6035/Farukabad/06 verified expeditiously and to place a report on the next date of hearing. The insurance company also was given the liberty to get the same investigated independently and file its report. A similar direction was issued on 17.07.2015 also. However, there was default by the IO as well as the insurance company in verifying the aforesaid details, hence the evidence of the respondent was closed on 09.03.2016.

3. During the pendency of this appeal, the Insurance Company has verified that the aforesaid driving license was legitimately issued and is valid. While holding the insurer liable for compensation, the impugned Award records inter alia:

> “..... Learned counsel for respondent No, 3/Insurance Company had taken a defence that respondent No.l was holding a fake driving licence and as such owner/driver have violated the terms and conditions of the insurance policy and Insurance Company is not liable to pay the compensation. Driving licence being a fake, was fully established during the investigation of the IO and for that section 468/471/ IPC in the chargesheet were added by IO after confirming that the DL produced by respondent no.l was fake. Since, Insurance company has been able to prove breach of terms and conditions of insurance policy, recovery rights are granted to Insurance Company. Insurance company is directed to pay compensation to petitioner in the first instance and claim recovery from owner/respondent no.2....”

4. The aforesaid reasoning refers only to the driving licence issued at Agra and not the one issued at Farukhabad. It makes no reference to the latter licence and provides no basis to conclude that the latter driving license was fake or that otherwise there was a breach of the conditions of the insurance policy especially when veracity of its validity was yet to be

ascertained. The appellant had all along claimed that the driver's driving license bearing No. 6035/Farukhabad/06, was in possession of the driver. Repeated opportunities afforded by the Tribunal to the insurer and the Investigating Officer were wasted by them and no evidence was led by them to doubt or disprove the genuineness of the said driving licence issued at Farukhabad.

5. In any case, now that the insurer has itself verified the genuineness and validity of the said driving licence issued at Farukhabad as had been claimed by the appellant, the repudiation of the claim and the denial of the insurance cover cannot be upheld. In the circumstances, the impugned judgment is without basis and is set aside. The consequent right granted to the insurer to proceed against the owner of the vehicle is quashed.

6. The learned counsel for the appellant says that he does not wish to press for any other relief.

7. The appeal is allowed.

NAJMI WAZIRI, J

APRIL 20, 2017/kk