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

*Decided on: 21<sup>st</sup> August, 2017*

+ **MAC APPEAL No.1047/2016 & CM Nos. 45577/2016,  
45655/17, 5367/2017**

**M/S SUPREME ROAD TRANSPORT PVT. LTD. .... Apellant**  
Through: **Mr. Abhishek Kumar, Adv.**

versus

**M/S NEW INDIA ASSURANCE CO. LTD &  
ANR. .... Respondents**  
Through: **Mr. J.P. N. Shahi, Adv. for R-1.**

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

**JUDGMENT (ORAL)**

1. The appellant is the registered owner of the offending truck bearing registration no. CG-04G-7354, the negligent driving of which is stated to have resulted in a motor vehicular accident that took place on 10.07.2008 at about 12.45 p.m. on GT Karnal Road, Village Khampur, Delhi, resulting in death of Ajay Kumar which was the basis of the claim for compensation, instituted as accident claim case (case no. 885/08), by parents of the said deceased.

2. The appellant herein was impleaded as second respondent before the tribunal, this in addition to Ram Singh Yadav, second respondent herein, he being the driver engaged in the vehicle by the appellant, besides the first respondent, it admittedly being insured against third party risk for the period in question. The record would

show that the appellant and its driver (second respondent) did not appear in spite of service and, thus, were set *ex-parte*.

3. The inquiry culminated in judgment dated 06.09.2014 whereby compensation in the sum of Rs. 5,64,000/- was awarded in favour of the claimants, the liability having been fastened on the insurer with interest @ 9% per annum from the date of filing of the petition till realization.

4. It is also noted that during the course of the aforesaid inquiry, the insurer had taken the plea of breach of terms and conditions of the insurance policy, the prime contention being that the truck did not have a valid permit for Delhi. The insurer had led evidence in this regard by examining Mahavir Singh (R3W1) to prove that it had called upon, *inter alia*, the appellant to produce all the necessary documents, including the permit, by serving a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) to which there was a response in the form of reply (Ex.R3W1/5) whereby the appellant shared the copies of driving licence and of the insurance policy of the vehicle but there was conspicuous silence on the issue of permit.

5. From the above facts and circumstances, the tribunal concluded that there was no valid permit in existence and, therefore, recovery rights were granted against the appellant and in favour of the insurer.

6. The appellant moved an application under Order 9 Rule 13 CPC, *inter alia*, contending that it was never served with the summons. The said application was dismissed by the tribunal, by order 31.08.2015, observing that the record showed that the notice had been

duly served on an employee (Manager Sadhu Ram) engaged by the appellant and there being nothing on record to show that the appellant was prevented by any sufficient cause from appearing before the tribunal, the plea for setting aside the *ex-parte* judgment thus being not acceptable.

7. The appeal at hand was filed seeking to assail the judgment dated 06.09.2014 and the order dated 31.08.2015. Alongside this appeal, application has been moved (CM No. 5367/2017), seeking liberty to adduce additional evidence under Order 41 Rule 27 CPC, the prime contention pressed in such application, and in the context of the main appeal, being that a valid permit did exist, the requisite fee thereof having been duly paid to the appropriate authority on 04.07.2007, such permit for Delhi being valid till 13.07.2008 which would cover the date of accident. A copy of document purporting to support the said contention has been submitted as Annexure H with the appeal at hand.

8. In the above noted facts and circumstances, it does appear just and proper that the appellant be given one more opportunity to prove existence of the valid permit for the crucial date. It cannot, however, be ignored that there has been a total neglect on the part of the appellant to prosecute its defence since there was opportunity granted for such purposes by the tribunal, the proceedings having remained pending on its board from July, 2008, till the judgment was passed on 06.09.2014, due caution again having come the way of the appellant by notice under 12 Rule 8 CPC which had been issued and served on the appellant by the insurer to which there was an evasive reply. It cannot

be ignored that on account of such neglect on the part of the appellant, the burden of the insurer would have unnecessarily multiplied, it being eventually called upon to bear the award with interest.

9. In the foregoing facts and circumstances, it is deemed proper that appellant be called upon to lead evidence for a short inquiry as to whether valid permit existed on the date in question. The case is remitted to the tribunal for such purposes. In the said inquiry, the burden to prove the existence of the valid permit would be that of the appellant (registered owner of the vehicle in question). Ordered accordingly.

10. The appellant and the insurer are directed to appear before the tribunal for further inquiry into the above aspect on 18<sup>th</sup> September, 2017. The tribunal shall give an opportunity to the appellant to prove its contention about the existence of the permit by formal evidence and, after such opportunity has been granted, the insurer will also be entitled to lead evidence in rebuttal, if any.

11. Given the above facts and circumstances, it is further directed that the tribunal shall also ascertain the additional burden that has been placed on the insurer on account of interest liability due to earlier neglect on the part of the appellant in rendering timely and effective assistance. If upon the conclusion of the said inquiry, the tribunal finds that a valid permit did exist, the appellant would be entitled to be indemnified by the insurer, but subject to it bearing the additional burden on account of interest liability. Conversely, if the tribunal were to hold that no valid permit existed, the recovery rights as already granted shall prevail and may be enforced by the insurer.

12. In terms of the directions in order dated 07.12.2016, the appellant is stated to have deposited the requisite amount with interest with the tribunal. The said deposited amount shall be retained by the tribunal in interest bearing fixed deposit account in a nationalized bank initially for a period of three months with provision for auto renewal. The said amount in deposit with accrued interest shall be availed by the tribunal for recording satisfaction of the order that is eventually passed.
13. The statutory amount shall be presently refunded.
14. All pending applications stand disposed of.

**AUGUST 21, 2017**  
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**R.K.GAUBA, J.**