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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 178/2017**

THE NEW INDIA ASSURANCE CO LTD Petitioner
Through: **Mr. J P N Shahi, Advocate**

versus

ABU HAIDER & ORS Respondents
Through: **Nemo**

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **14.02.2017**

C.M.No.5796/2017 (Exemption)

Allowed subject to all just exceptions.

C.M.5797/2017 (delay)

There is delay of 70 days in re-filing the accompanying appeal.

For the reasons stated in the application, it is allowed and delay occasioned is condoned.

The application stands disposed of.

CM(M) 178/2017

In a road accident, which took place on 15th September, 2015, the claim petition was filed by the first respondent herein to seek compensation in respect of injuries suffered by him.

As per Detailed Accident Report (hereinafter referred to as DAR) of March 2016, respondent No.2, driver of Swaraz Mazada Bus was possessing driving licence, which was valid for Light

Motor Vehicles (LMV). It is so indicated in column No.25 of DAR (Annexure P-1). However, in column 58 of DAR, pertaining to driving without a valid DL (driving licence), it is mentioned NA (not applicable). According to petitioner's counsel, while looking at column No.58 of DAR, settlement was arrived at with respondent-claimant before the Lok Adalat and the settled amount / compensation has also been paid to the respondent-claimant.

In this petition, the order impugned is 15th September, 2016 vide which petitioner's application under Section 151 CPC read with Section 169 of *Motor Vehicles Act* for framing of issue regarding improper driving licence has been dismissed by learned Tribunal by observing that it cannot go beyond Award passed by the Lok Adalat and so application has been dismissed as not maintainable.

To assail the impugned order, learned counsel for petitioner-insurer submits that petitioner was mislead by the information given under Clause 58 of DAR and so petitioner's application ought to have been allowed to contest the claim petition qua owner and driver of the vehicle in question as the offending vehicle was being driven without a valid driving licence. Lastly, it is submitted by petitioner's counsel that Award of Lok Adalat is not being disturbed and so the impugned order deserves to be set aside and permission be granted to petitioner to contest the claim petition qua owner and driver of the vehicle in question.

Upon hearing and on perusal of *The Legal Service Authorities Act, 1987*, I find that the negligence is of petitioner in

not considering the DAR report in its entirety. It is relevant to note that in Column No.25, it is clearly disclosed that driver of the vehicle in question was holding DL (driving licence) for Light Motor Vehicles (LMV). So it is not a case of concealment of facts entitling petitioner to reopen claim petition. In such cases, petitioner ought to obtain Investigator's report prior to entering into settlement. In the instant case, Investigator's Report has been obtained on 17th August, 2016 i.e. after entering into settlement on 13th August, 2016 before the court of Lok Adalat. So, no premium can be placed upon negligence of petitioner. In any case, it is not a case where the driver of the vehicle in question was not holding a driving licence. In the instant case, driver was holding driving licence for a different category of vehicle(s).

Be that as it may. As per Section 21 of *The Legal Service Authorities Act, 1987*, Award is final and binding on the parties and is not appealable. Infact, this petition is in a garb of an appeal against the impugned order. So, this petition is dismissed as not maintainable. Otherwise also, there is no infirmity in the impugned order. Since, this petition is misconceived, so it is dismissed with costs of ₹10,000/- to be deposited with Delhi High Court Legal Services Committee within four weeks.

(SUNIL GAUR)
JUDGE

FEBRUARY 14, 2017
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