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

Decided on: 11th July, 2017

+ MAC.APP. 955/2016

SUBHASH GOYAL

..... Appellant

Through: Mr. Syed Hasan Isfahani, Adv.

versus

M/S BAJAJ ALLAINZ GENERAL INSURANCE COMPANY
LIMITED & ANR

..... Respondents

Through: Mr. Apoorv Chandra Saxena,
Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 23.02.2016, passed on the file of accident claim case (suit no. 694/2014), the motor accident claims Tribunal upheld the case of the claimants, legal heirs of Kanishka Srivastava, about death having been caused due to negligent driving of motor vehicle described as Eicher Canter bearing registration no. HR 55F 2404 by the second respondent herein and awarded compensation in the sum of Rs. 25,92,000/- with interest @ 9% per annum. The said vehicle was concededly insured against third party risk for the period in question with the first respondent (insurer), on a policy taken out by the appellant herein, he being the registered owner of the vehicle.

2. The insurance company had contested the case, denying its

liability to indemnify on the plea that the driver was not holding a valid or effective driving license and, thus, there was a breach of terms and conditions of the insurance policy. This contention was upheld and while the insurance company was directed to discharge its statutory responsibility by paying the compensation to the claimants, the insurer was granted right to recover the said amount from the appellant.

3. The appellant's contention is that he could not bring on record, during inquiry before the tribunal, the fact that the second respondent (driver) was actually holding a valid and effective driving license. An extract of a driving license purportedly issued by the Transport Department, Uttar Pradesh, on 08.11.2016, attested by licensing authority at Hardoi, UP, has been submitted as Annexure A-13 (page 143 of the paper book). The said document does seem to indicate that driving license in the name of the second respondent was issued on 20.08.1998 authorising him to drive a motorcycle, or a light motor vehicle (LMV). Later, an endorsement was made on 09.11.2006 permitting the said driver to drive a transport vehicle. The license was periodically renewed and presently seems to be valid upto 12.10.2019, concededly for purposes of LMV (transport). The license appears to hold good covering the date of accident.

4. It was, however, argued on behalf of the insurance company that the vehicle was engaged by Vikas Oil Carrier for dangerous and hazardous cargo and that the vehicle in question was a heavy goods vehicle for which license relied upon by the appellant cannot be treated as valid.

5. Contentious issues persist which would require some additional inquiry. Without disturbing the award of compensation granted in favour of the claimants, the issue as to whether there was a breach of terms of the policy giving rise to a valid defence in favour of the insurance company, in the particular context of nature of the vehicle and the driving license now relied upon is remitted to the tribunal for further inquiry. In such inquiry, the tribunal will give opportunity to the appellant (the registered owner of the offending vehicle) and to the insurer to lead evidence. Needless to add, given the short issue involved, each side will be entitled to only one opportunity for the purpose of leading evidence. The tribunal after giving such opportunity shall pass a reasoned order adjudicating upon the pleas raised by both sides and regulate the recovery rights claimed by the insurance company accordingly.

6. The parties shall appear before the tribunal for further proceedings in above light on 10th August, 2017. The tribunal's record shall be returned.

7. The appeal stands disposed of in above terms.

8. Statutory amount as would have been deposited by the appellant in this court, would be presently retained, its release being contingent upon result of the inquiry which has been remitted, for which the tribunal shall pass the requisite directions.

9. *Dasti.*

R.K.GAUBA, J.

JULY 11, 2017/nk