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

Decided on: 17th July, 2017

\+ MAC APPEAL No. 597/2017

THE ORIENTAL INS. CO. LTD. ..... Appellant
Through: Mr. S.P. Jain & Mr. Himanshu Gambhir, Advs.

versus

ANJLEENA KHUNGAR & ORS. ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. The accident claim case (Petition no. 501/2003) was instituted before the motor accident claims tribunal on 22.10.2003 by the widow of Sunil Kumar Sikka, joining certain other dependent family members, to claim compensation on the allegations that the said person had died in a motor vehicular accident that had occurred on 14.07.2003 due to rash driving of Tata Indica car bearing No. HR 06 H 6791 by Arjun Khungar, the said vehicle being registered in the name of Super Tex Spinners and concededly insured against third party risk with the appellant insurance company for the period in question. The insurer contested the said proceedings, *inter alia,* on the ground that there was breach of terms and conditions of the

insurance policy as the driving license (Ex.RX1) presented by the said driver was not a validly issued document.

2. The above plea was accepted initially and the insurance company was granted recovery rights against the driver. The insurance company thereafter moved an application under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (CPC) which resulted in modification by order dated 03.06.2006 and the recovery rights were granted against the registered owner of the vehicle.

3. Subsequently, the driver and owner of the vehicle moved an application under Order 9 Rule 13 CPC which came up before the tribunal which registered it as M.No. 3/10 and allowed it only to the extent of re-opening the issue of recovery rights, by order dated 24.08.2011 of the tribunal. The said order was challenged by the appellant insurance company by CM (M) 1499/2011 before this Court. The petition was disposed of by order dated 18.02.2013 with directions to the tribunal to focus on two prime issues, the first being as to whether the driving licence was validly issued by the licensing authority at Panipat, Haryana, to be renewed thereafter from time to time by licensing authority at Karnal, Haryana and the other as to whether the driving license was valid on the date of accident.

4. The inquiry into the issue of recovery rights, thus re-opened, has resulted in fresh decision of the tribunal by judgment dated 06.04.2017. On the basis of evidence adduced it has been found by the tribunal that the driver did have the driving license which had been actually issued by the licensing authority at Karnal, Haryana, it having been renewed for several years in the past though the initial issue of

license by the said authority was based on a document which purported to be a license issued by Panipat Authority, it being fake.

5. On the basis of the above findings, the tribunal has declined to grant recovery rights to the insurance company.

6. The insurance company does not question the correctness of findings on facts. Its contention, however, is that in the face of the fact that the original license issued by Karnal Authority was based on fake document presented before it in 1996, all renewals over the subsequent periods, lastly for the period covering the accident i.e. 14.07.2003 would be illegal and, therefore, the license though actually issued by the transporting authority at Karnal has to be treated as *non-est*.

7. On identical fact-situation, this Court in MAC Appeal No. 513/2014 *Future Gnerali India Insurance Company Ltd. vs. Bala & Ors.* decided on 17.03.2016, held as under:-

> *"6. ... the driver held a valid driving licence issued by the licensing authority at Nuh (Haryana) on 11.04.2011 with validity up to 10.04.2014, thus, covering the date of accident. For purposes of the proceedings before the tribunal, it was of no consequence that the driving licence had been got issued on the basis of some fake document purporting to have been issued by the licensing authority at Agra (UP). Such facts may give rise to consequences, including under the criminal law, against the person having indulged in fabrication or use of forged documents. Without it being shown that the owner of the offending vehicle was privy or party to such design on the part of the driver to obtain a driving licence on the basis of fabricated document, the insurer cannot be allowed to plead breach of terms and conditions of the insurance policy. [United India Insurance Company Ltd. V. Lehru & Ors. (2003 3 SCC 338)*

and National Insurance Company V. Swaran Singh (2004) 3 SCC 297]".

8. In view of the above, the approach of the tribunal cannot be faulted.

9. The appeal is, therefore, dismissed.

R.K.GAUBA, J.

JULY 17, 2017
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