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

Date of Decision: July 16, 2018

\+ **MAC. APP. 137/2013**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. D.D.Singh, Mr. Navdeep Singh, Advocates

Versus

MADHU & ORS. ..... Respondents
Through: Mr. Vipin Gogia, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 8th May, 2012 grants compensation of ₹3,52,300/- with interest @ 7.5% p.a. to respondents-claimants on account of death of one Pankaj in a vehicular accident on 27th January, 2007.

2. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"On the fateful day, the deceased was going towards his office from his residence via Jaitpur Road, Pahari Dhalan, Badarpur, on his motorcycle bearing no. DL-3S-AP-5381 (Bajaj Pulsar) and when he reached at Pahari Dhalan, Badarpur, all of sudden a bus bearing No. DL-1PB-0774 which was being driven by the respondent no.1 came from behind and hit the victim. Due to this, victim suffered*

grievous injuries and was removed to AIIMS Hospital. An FIR No. 76/2007 with police station Badarpur was registered against first respondent."

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* and the breakup of compensation awarded is as under:-

1.) Loss of dependency	:	₹3,12,300/-
2.) On account of Love and affection	:	₹25,000/-
3.) Funeral expenses	:	₹15,000/-
Total	:	₹3,52,300/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the liability aspect. It is submitted that since the driving licence of driver of the vehicle in question was fake, therefore, appellant seeks exoneration from paying awarded compensation. The precise submission of appellant's counsel is that liability to pay the awarded compensation is of driver and owner of the vehicle in question. To submit so, attention of this Court is drawn to the evidence of R3W1 who tendered his evidence by way of affidavit as Ex. R3W1/A and referred the documents mentioned therein as Ex.R3W1/1 to 5 and produced the verification conducted by investigator Sh. Yash Bhardwaj regarding the driving licence of erring driver Sh. Ashok Kumar as Ex. R3W1/6 and the notice issued under Order 12, Rule 8 of CPC and the postal receipts regarding sending of this notice.

5. Attention of this Court is also drawn to the report of 28th August, 2008 of the concerned Licencing Authority to show that the driving

licence in question had not been issued by said Licencing Authority. Reliance is placed upon a decision of Coordinate Bench of this Court in MAC. APP. 296/2009, *Sanjay Datta vs. The New India Assurance Company Ltd. and Others* decided on 21st November, 2012 to submit that once service of notice under Order 12, Rule 8 of CPC is proved, then adverse inference ought to be drawn against the owner and driver of the insured vehicle. It is pointed out that the Tribunal after presuming driving licence in question to be fake, has erroneously put the burden upon the appellant-Insurer. Thus, it is submitted that appellant deserves to be exonerated from liability to pay the compensation awarded.

6. On the contrary learned counsel for owner of the vehicle in question submits that the evidence of R3W1 is not in respect of the report of the concerned Licencing Authority and so appellant has failed to discharge the onus and thus liability to pay the compensation is of the insurer. To submit so, reliance is placed on Supreme Court's decision in *National Insurance Co. Ltd. vs. Swaran Singh and Others* (2004) 3 SCC 297.

7. Counsel for respondent-Owner submits that despite opportunity given by the Tribunal, appellant has failed to prove Licencing Authority's report regarding the driving licence in question and so, no case is made out for fastening the liability on respondent-Owner to pay the awarded compensation.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the evidence of appellant's witness is only in respect of sending of notice under Order 12, Rule 8 of CPC and is not in respect of the report of 28th August, 2008 issued by the concerned Licencing

Authority. A perusal of record reveals that despite ample opportunity given, appellant has failed to prove the aforesaid report of 28th August, 2008 on record. The initial burden is on the appellant to show that the driving licence in question was fake. Appellant has failed to discharge this burden. It is true that notice under Order 12, Rule 8 of CPC was sent to the owner of the vehicle in question and the owner has produced the documents which were in his possession. Supreme Court in *Swaran Singh (supra)* has reiterated that the breach of insurance policy has to be proved by cogent evidence. In the instant case, appellant has failed to do so and so, the impugned Award cannot be faulted with.

9. As such, finding no substance in this appeal, it is dismissed with direction to refund statutory deposit to appellant forthwith.

(SUNIL GAUR)
JUDGE

JULY 16, 2018
SRwt