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

Date of Decision: August 01, 2018

\+ **MAC. APP. 240/2013**

IFFCO TOKIO GENERAL INS. CO. LTD. ..... Appellant

Through: Mr. Abhiushek Kumar Gola, Advocate

Versus

MUNNA @ DAUD & ORS. .....Respondents

Through: Nemo.

\+ **MAC. APP. 262/2013**

IFFCO TOKIO GENERAL INSURANCE CO. LTD...... Appellant

Through: Mr. Abhiushek Kumar Gola, Advocate

Versus

AZAD KHAN & ORS. .....Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In a vehicular accident, which took place on 23rd March, 2010, Munna @ Daud, s/o Ramajan Ali and Azad Khan s/o Munshi Khan, were grievously injured and they had sought compensation on account of injuries suffered by them. Vide separate Awards of even date i.e. of 2nd January, 2013, the Motor Accident Claims Tribunal *(henceforth referred*

to as the "Tribunal"), granted compensation of ₹5,85,200/- with interest @7.5% to injured *Munna @ Daud* and compensation of ₹1,26,031/- with interest @7.5% p.a. to injured *Azad Khan* while holding appellant-*Insurer* liable to pay the awarded compensation.

2. In the above captioned two appeals, the challenge is to the aforesaid impugned Awards on the liability aspect only, therefore, the facts of this case and the breakup of compensation, as awarded by the Tribunal, need not be adverted to. The driver and owner of vehicle in question had neither contested before the Tribunal nor has before this Court. Since these appeals arise out of one accident, therefore, with the consent of counsel for appellant, these appeals have been heard together and are being disposed of by this common judgment.

3. Counsel for appellant-*Insurer* assails the impugned Awards on the ground that the Tribunal has saddled Insurer with the liability to pay the awarded compensation on the ground that Notice under Order XII, Rule 8 CPC was not issued to driver and owner of the insured vehicle. It is pointed out by counsel for Insurer that witness from the concerned Licensing Authority had come forward to prove that one of the driving licenses of the driver of insured vehicle was found to be fake and other driving license was for light motor vehicles *(NT)* and motor cycle only. It is pointed out that license for light motor vehicle was specifically made for Non Transport Vehicles, whereas driver of the insured vehicle was driving a light goods vehicle, which had met with the accident. It is further pointed out by learned counsel for Insurer that the Tribunal has erred in distinguishing Supreme Court's decision in *Oriental Insurance*

Co. Ltd. Vs. Angad Kol & ors. (2009) 11 SCC 356, wherein it has been clearly declared that if the driver does not hold a valid and effective license for driving a goods vehicle, then it tantamounts to breach of terms and conditions of insurance policy and so, recovery rights were granted to the Insurer. Thus, it is submitted that in light of Supreme Court's decision in *Angad Kol (Supra)*, recovery rights ought to be granted to Insurer.

4. Upon hearing and on perusal of evidence on record and the decision cited, I find that Supreme Court in *Angad Kol (Supra)* has categorically declared that recovery rights ought to be granted, if driver of the insured vehicle does not hold valid and effective driving license to drive the goods vehicle. The Tribunal has erred in distinguishing the Supreme Court's decision in *Angad Kol (Supra)*. Accordingly, impugned Awards are modified to the extent that the liability to pay the compensation is of the driver and owner of the insured vehicle. It is brought to the notice of this Court that the awarded compensation has been already disbursed to the Injured persons. Resultantly, recovery rights are granted to appellant-*Insurer* to recover the awarded amount with interest from the owner and driver of insured vehicle in question.

5. With aforesaid directions, the above captioned two appeals are disposed of. Statutory deposit, if any, be refunded to appellant-*Insurer*.

(SUNIL GAUR)
JUDGE

AUGUST 01, 2018
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