* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: September 06, 2018

\+ **MAC.APP. 193/2018**
\+ **MAC.APP. 214/2018**
\+ **MAC.APP. 215/2018**

NEW INDIA ASSURANCE CO LTD .....Appellant
Through: Mr. Ravinder Singh, Advocate

versus

GOPAL MALHOTRA & ORS.
SUMAN MALHOTRA & ORS.
VRINDA MALHOTRA & ORS. .....Respondents
Through: Mr. Satish Mishra, Advocate for respondent No. 2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

1. The above captioned three appeals arise out of common impugned Award of 10th January, 2018 vide which the *Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal')* has granted compensation to respondent-*Injured* persons.

2. The challenge to the impugned Award by appellant-*New India Assurance Co. Ltd. (hereinafter referred to as 'Insurer')* is on the ground that the Tribunal has held that the driving licence of driver of the insured vehicle was found to be fake, but has failed to grant recovery rights against owner of the insured vehicle.

3. The factual background of this case, as already noticed in the

impugned Award, needs no reproduction as in these appeals, recovery rights are sought against the owner of the insured vehicle. In the impugned Award, the Tribunal has refused to grant recovery rights to appellant-Insurer on the ground that possibility of owner of the insured vehicle being misled by the driver of the said vehicle cannot be ruled out.

4. Learned counsel for Insurer places reliance upon Supreme Court's decisions in *United India Insurance Co. Ltd. Vs. Lehru and Others,* (2003) 3 SCC 338, *New India Assurance Co., Shimla Vs. Kamla and others,* (2001) 4 SCC 342 and *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others,* (1987) 2 SCC 654 to submit that recovery rights ought to be granted against owner of the insured vehicle as due diligence has not been exercised to ensure that the driver employed is competent to drive the insured vehicle. On the strength of the aforereferred decisions, recovery rights are sought by Insurer's counsel against owner of the insured vehicle.

5. On the contrary, learned counsel for owner of the insured vehicle supports the impugned Award and submits that the driving licence of the driver did not appear to be fake and so, these appeals deserve dismissal.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that evidence has been led on behalf of owner of the insured vehicle, but it is not stated in the evidence that the driving licence of driver of the insured vehicle on the face of it looked genuine or that the owner had taken the driving test of driver and upon finding the said driver to be competent to drive, the owner of the insured vehicle had employed him. Since evidence of owner on the aforesaid

aspect is lacking, therefore, the Tribunal was not justified in jumping to a conclusion that owner of the insured vehicle was misled by the driver. Since the evidence of owner of the insured vehicle on the aforereferred vital aspect is lacking, therefore, the impugned Award is modified to the extent of granting recovery rights to appellant against driver and owner of the insured vehicle.

7. These three appeals are accordingly disposed of while modifying the impugned Award to the aforesaid extent.

(SUNIL GAUR)
JUDGE

SEPTEMBER 06, 2018
v