

\$~27

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

+ MAC.APP. 467/2018 & CM APPL. 19910/2018

HAFEES

..... Appellant

Through: Mr.Saurabh Kansal, Advocate

versus

ICICI LOMBARD MOTOR INSURANCE
CO LTD & ORS

..... Respondents

Through: Mr.Pankaj Gupta, Advocate for
Mr.Suman Bagga, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

%

14.12.2018

CM APPL.19912/2018

1. The appellant is seeking condonation of delay of 1613 days in filing the appeal on the ground that he came to know of the impugned order in 2014 but was unable to approach this Court due to extreme poverty and had no means to file the appeal. The appellant was behind bars for more than one occasion totalling to about 2 months in execution proceedings of the impugned award. The appellant while in custody was advised by the jail visiting counsel to file the appeal by availing the legal aid. The appellant approached Delhi High Court Legal Services Committee for filing the appeal but could not arrange the statutory deposit of Rs.25,000/-. The appellant is seeking condonation of delay and exemption from depositing the statutory deposit. Reliance is placed on *Hanmavva vs. Pettiya*, 2008(5) ALLMR (SC) 1007 *Perumon Bhagvathy Dewaswom, Perinadu Village vs. Bhargavi Amma*, 2008 (8) SCC 321.

2. This Court is satisfied that the appellant has sufficiently explained the delay. The delay in filing the appeal is condoned.

3. Application is disposed of.

CM APPL. 19911/2018

4. In the peculiar facts of this case, the appellant is exempted from depositing the statutory amount.

5. Application disposed of.

MAC.APP. 467/2018

6. The appellant has challenged the impugned award dated 09th September, 2013 whereby the Claims Tribunal awarded compensation of Rs.3,27,697/- to respondent No.3 and granted recovery rights to respondent No.1 to recover the award amount from the appellant and respondent No.2. The appellant's challenge is limited to the grant of recovery rights by the Claims Tribunal.

7. The appellant is the owner of the Indica Car bearing No. DL 1YB 4112 which was driven by respondent No.2 at the time of the accident. Respondent No.2 was holding a valid driving licence No.3688/Aligarh/02 to drive LMV as well as transport vehicles. The Claims Tribunal granted recovery rights to respondent No.1 to recover the award amount from the appellant and respondent No.2 herein on the ground that the driver of the offending vehicle was having licence to ply LMV and Transport vehicle but not for commercial purpose.

8. Learned counsel for the appellant submits that the Supreme Court in *Mukund Dewangan v. Oriental Insurance Co. Ltd.*, (2017) 14 SCC 663 has held that no separate endorsement is required on the licence of LMV category to drive light motor transport vehicle. Reference is made to paragraph 46 (ii) of the judgment.

9. Learned counsel for the respondent submits that the impugned award

was passed by the Claims Tribunal prior to the judgment in ***Mukund Dewangan*** (supra) and, therefore, the appellant cannot get the benefit of the same. It is further submitted that the ***Mukund Dewangan*** (supra) has been referred to a Larger Bench.

10. This case is squarely covered by the principles laid down by the Supreme Court in ***Mukund Dewangan*** (supra) and there is no impediment to the adjudication of this matter by applying the principles laid down by the Supreme Court.

11. Applying the principles laid down in ***Mukund Dewangan*** (supra), this Court holds that respondent No.2 was holding a valid driving licence at the time of the accident and no separate endorsement was required on the driving licence to drive the offending vehicle for a commercial purpose. In that view of the matter, respondent No.1 is not entitled to recovery rights against the appellant and respondent No.2.

12. The appeal is allowed and the recovery rights granted by the Claims Tribunal against the appellant and respondent No.2 are hereby set aside.

13. Pending application is disposed of.

14. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

DECEMBER 14, 2018

ds