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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 9th March, 2018

\+ MAC.APP.1047/2011 & CM No. 15977/2014

SURENDER SINGH ..... Appellant
Through: Mr. S.K. Pabbi & Ms. Disha Singh, Advs.

versus

NEW INDIA ASSURANCE CO. LTD.& ORS ..... Respondents
Through: Mr. Shoumik Mazumdar, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The appellant herein has been the registered owner of truck bearing no. HR 37 A 3669 (the truck) at all relevant times. The said truck was statedly driven in a negligent manner by Jasbir Singh (sixth respondent) on 02.12.2003, it resulting in a motor vehicular accident involving motorcycle bearing no. UP 16D 5672 leading to death of its rider Sunil Kumar Thapliyal.

2. The wife and other members of the family of Sunil Kumar Thapliyal (the deceased) instituted accident claim case (suit no. 05/2004) on 03.01.2004 in which the said Jasbir Singh (the driver) and the appellant (the registered owner) of the truck were impleaded as first and second respondents, this in addition to New India Assurance Company Ltd. (the insurer), first respondent herein. The claim case

was contested by the appellant and the driver by a joint written statement not disputing the factum of collision but denying negligence on the part of driver. The case was put to trial on the basis of issues framed on 21.10.2005 and it eventually resulted in judgment and award being passed by the motor accident claims tribunal on 18.01.2008, holding that the death had occurred due to negligence on the part of truck driver. Compensation in the sum of Rs. 23,12,000/- was awarded in favour of the second to fifth respondents herein (the claimants) and liability to pay the said amount with interest @ 9% per annum from the date of filing of the petition till realization was fastened initially on the insurer.

3. The insurer had taken the plea that there was breach of terms and conditions of the insurance company for the reason the driver (sixth respondent) was not holding a valid driving licence. The evidence led by the insurer through witness Saroj Bala (R3W1) remained unimpeached. Neither the appellant nor the driver led any evidence or responded to the notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) whereby they had been called upon to produce the driving licence. It is on that basis that the tribunal, by judgment dated 18.01.2008, upheld the contention of the insurer and, thus, granted it recovery rights against the appellant holding it to be a case of breach of terms and conditions of the insurance policy.

4. The appeal at hand was filed in November, 2011 almost four years after the passing of the judgment by the tribunal granting the

recovery rights. On the request of the appellant, additional opportunity was given to lead evidence in respect of the contention that the driver did hold a valid driving licence on the relevant date. For this purpose, the appellant led evidence, *inter alia,* by examining Kuldeep Singh (AW-1), an official of District Transport Officer, Hoshiarpur, Punjab,.

5. Though, in the appeal, the appellant had also taken the position that there was an arrangement with a third party wherein the vehicle had been handed over to such party for being plied, at the hearing, the learned counsel for the appellant submitted that he does not press for any relief on that account, the request only being that since the evidence led in the course of appeal clearly shows the driver was holding a valid and effective driving licence, the recovery rights be vacated.

6. *Per contra*, it has been argued on behalf of the insurer that the driving licence which has been proved through AW-1 was issued on 13.06.2002 and though it was valid for the vehicle in question till 12th June, 2005, covering the date of cause of action, it was suspect inasmuch as it had been issued on the basis of a document which was seemingly fake and fabricated. It is also the grievance of the insurer that on account of default on the part of the appellant to assist at the appropriate stage during the inquiry before the tribunal, the plea having been raised more than four years after the disposal of the case by the tribunal, the liability of the insurance company towards interest

on the awarded compensation had unnecessary got inflated and, therefore, the appellant should not be allowed to get away.

7. The evidence of AW-1 has brought home that a valid driving licence had been issued on 13.06.2002 which was effective upto 12th June, 2005, it permitting the driver to be at the wheel of a vehicle even in the nature of heavy transport vehicle (HTV). In these circumstances, whether or not the document on the basis of which such renewed licence had been issued on 13.06.2002 were genuine, is irrelevant for the present proceedings. The rule of main purpose applies [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297]. There being no evidence to show that the appellant, registered owner of the vehicle, was privy to the fact that renewal of the licence had been obtained on the basis of fake documents, he cannot be deprived of the benefits under the insurance cover. [see MAC Appeal No. 269/2017 titled *New India Assurance Co. Ltd. vs. Sahira & Ors.* decided on 13th July, 2017].

8. But, the fact remains that the appellant did not assist the tribunal when there was an opportunity to do so at the stage of inquiry. He was well aware of the defence taken by the insurance company. The record of the tribunal shows he was taking the proceedings before the tribunal casually. He would appear or not appear as per his own sweet will. He was set *ex-parte* which order was set aside whereby he was permitted to file WS but he again did not appear when the evidence was being recorded. The insurance company had issued notice under Order XII Rule 8 CPC and inspite of service of such notice he would

not respond. The appeal was filed four years after the passing of the judgment granting recovery rights only upon the insurance company having proceeded with the attempt to enforce such rights.

9. In these circumstances, the appellant will have to share the added responsibility of the insurance company towards the component of interest which was payable to the claimants.

10. A similar view was taken by this Court in MAC Appeal No. 345/2016 *Narender Singh vs. National Insurance Co. Ltd.* decided on 20th September, 2017 arising out of similar facts and circumstances whereby this Court held as under:

> *"6. The failure on the part of the appellant to effectively assist the tribunal at the time of the inquiry added to the burden of the insurance company which all along was searching for the valid permit and was making efforts to find the correct state of affairs, inter alia, by summoning witnesses. The argument of the counsel for the appellant that such defence was not taken in the pleadings by the insurance company is found to be factually incorrect as paras 4 and 5 of the written statement of the insurance company did raise the issue relating to the permit such being one of the defences available to it in law.*
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> *7. Section 168(1) of the Motor Vehicle Act 1988 gives the discretion to the tribunal, and consequently also to the appellate forum, to specify the amount which is to be paid by either the insurer or the owner or the driver of the vehicle involved in the accident or by all or any of them. In the given facts and circumstances, while the appellant may be entitled to be indemnified by the insurance company, in view of neglect on his part by not rendering proper assistance at the inquiry it must entail a direction that he shall bear the interest liability which*

has been added to the burden of the insurance company. Ordered accordingly".

11. Thus, the recovery rights in respect of principal amount of compensation are set aside. It is directed that the appellant is liable to pay the component of interest from the date of institution of suit till the date of filing of the present appeal. If the insurance company had already paid the component of interest prior to filing of the present appeal then the same shall be communicated to the appellant making him liable to refund the same to the insurance company within thirty days. If there is any deficiency found in the payment of component of interest prior to the filing of the present appeal, the same shall be paid by the appellant to the claimants within thirty days.

12. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

MARCH 09, 2018
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