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

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Date of Decision: 11th January, 2018

+ MAC.APP. 438/2017

M/S AB GRAIN SPIRITS PVT LTD` Appellant

Through: Ms. Biji Rajesh and Mr. Diwakar
Sethi, Advocates.

versus

JOYDEEP MONDAL & ORS

(THE NEW INDIA ASSURANCE CO LTD) Respondents

Through: Mr. S.P.Jain, Ms. Amandeep Kaur
and Mr. Rajan, Advocates for New
India Assurance Co. Ltd.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 24th September, 2016 in so far as the Claims Tribunal has given recovery rights to respondent No.4 to recover the award amount from the appellant.
2. The Claims Tribunal has granted recovery rights to respondent No.4 on the ground that the driver of the offending vehicle was not authorised to drive the transport vehicle on the date of the accident. The driving license of the driver of the offending vehicle was placed on record of the Claims Tribunal as Ex.PW1/11. The report of the Licensing Authority, Hathras, U.P. was placed on record by the Investigating Officer according to which the endorsement with respect to the transport vehicle was made on the driving license of the driver for the period 15th May, 2014 to 14th May, 2017.

3. Learned counsel for the appellant submits that the appellant appointed the driver after examining the driving license which was valid from 28th August, 2008 to 27th August, 2028 with respect to the private vehicles and from 28th August, 2008 to 14th May, 2017 in respect of the transport vehicles. It is submitted that there is no breach on the part of the appellant and, therefore, the recovery rights are not warranted. It is further submitted that the appellant could not lead any evidence before the Claims Tribunal and the appellant be permitted to lead additional evidence to prove the defence.

4. Learned counsel for respondent No.4 submits that the verification report of the Licensing Authority was placed on record by the Investigating Officer along with the DAR according to which the driver of the offending vehicle was not authorised to drive the transport vehicle on the date of the accident i.e. 4th May, 2014 and, therefore, the Claims Tribunal has rightly granted the recovery rights to respondent No.4. It is further submitted that respondent No.4 has deposited the entire award amount with the Claims Tribunal and the same has been released to the claimants.

5. In the facts and circumstances of this case, the impugned award is set aside to the limited extent in so far as the Claims Tribunal has granted the recovery rights to respondent No.4 to recover the award amount from the appellant. The compensation awarded by the Claims Tribunal to the claimants is upheld. The appellant is granted permission to lead additional evidence before the Claims Tribunal. Respondent No.4 is also permitted to lead evidence in rebuttal after the appellant's evidence. The Claims Tribunal shall pass a fresh order after the additional evidence. The appeal is disposed of.

6. The appellant has deposited Rs.2,44,796/- and Rs.69,616/- with the Claims Tribunal on 8th May, 2017 in terms of the award and the said amount is lying with the Claims Tribunal. The Claims Tribunal is directed to release the aforesaid amount to respondent No.4, subject to the fresh order to be passed by the Claims Tribunal in terms of this judgment. In the event of the appellant succeeding before the Claims Tribunal, the Claims Tribunal shall pass an appropriate order directing respondent No.4 to refund the amount to the appellant along with the interest at such rate as may be considered appropriate after hearing the parties. However, in the event of respondent No.4 succeeding before the Claims Tribunal, respondent No.4 shall be entitled to retain the amount directed to be released today.

7. The parties shall appear before the Claims Tribunal on 26th February, 2018 when the Claims Tribunal shall fix the date for recording of the additional evidence of the appellant. Learned counsel for the appellant as well as respondent No.4 have noted down the next date of hearing and they waive requirement of a fresh notice by the Claims Tribunal.

8. The record of the Claims Tribunal be returned forthwith.

9. Copy of this judgment be given *dasti* to the counsels for the parties under the signature of the Court Master.

JANUARY 11, 2018
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J.R. MIDHA, J.