$~14 & 15

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

Decided on: 24th April, 2018

\+ MAC.APP. 465/2017

SANJAY ARORA ..... Appellant

Through: Mr. Rajeshwar Singh & Ms. Kusum Lata, Advocates.

versus

SHRI RAM GENERAL INSURANCE CO LTD & ORS ..... Respondents

Through: Mr. Sameer Nandwani & Mr. Pankaj Singh Thakur, Advs. for R-1.

\+ MAC.APP. 466/2017

SANJAY ARORA ..... Appellant

Through: Mr. Rajeshwar Singh & Ms. Kusum Lata, Advocates.

versus

SHRI RAM GENERAL INSURANCE CO LTD & ORS ..... Respondents

Through: Mr. Sameer Nandwani & Mr. Pankaj Singh Thakur, Advs. for R-1.

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

JUDGMENT (ORAL)

1. Both these appeals arise out of common judgment rendered by the motor accident claims tribunal on the file of two claim cases (suit

no. 482/2013 and 427/2014) of Rushi and Tinku Gupta, seeking compensation for injuries suffered by them in a motor vehicular accident that took place on 07.04.2013 when the car in which they were travelling came to be involved in a collision with a truck bearing no. HR 38N 6893.

2. The claim cases were filed attributing negligence on the part of the driver of the said truck namely Rakesh Kumar, son of Baldej Raj, respondent in these appeals. The truck was registered in the name of the appellant, he having been impleaded as one of the respondents in the claim cases in addition to the first respondent (insurer), it having concededly issued the insurance policy covering third party risk in respect of the said vehicle.

3. While contesting, the insurer had raised the issue of breach of terms and conditions of the insurance policy. It is the said plea which was accepted and, thus, while directing the insurance company to pay the compensation determined by the judgment dated 24.02.2016, the tribunal granted recovery rights in its favour against the appellant.

4. It appears that during the course of investigation into the case that had been registered by the police after the motor vehicular accident it had taken in possession the driving licence of the said driver Rakesh Kumar, son of Baldev Raj. The said licence purported to have been issued by the District Transport Authority, Phek, Nagaland; it being valid for the date of the accident but issued to authorise the said person to drive motor vehicles described as "MC/LMV/MMV/HMV". The investigating officer had obtained a confirmation/verification report from the District Transport Officer,

Nagaland which indicated the said person to be authorized in terms of the said document to drive motor vehicle described as “MC, LMV, MMV, MGV” only. It is in that light that the tribunal found the plea of the insurance company correct.

5. The appellant, however, by the present appeals insisted that the report of the District Transport Officer, Nagaland as obtained by police was factually not correct, in that the driving licence, held by him authorized him to drive heavy transport vehicle as well.

6. Pursuant to directions which were issued by this Court earlier, the District Transport Officer, District Phek, Nagaland has sworn an affidavit on 28.11.2017 which has come on record, it having been submitted by Assistant Resident Commissioner, Nagaland. The said affidavit confirms that the driving licence issued to the afore-mentioned driver permits him to drive “MC, LMV, MMV and HMV”.

7. It is argued that the vehicle involved here is a truck, a heavy transport vehicle, though meant for carriage of goods. That distinction, however, would not be of any consequence since the rule of main purpose applies [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

8. Thus, the appeals are allowed. The recovery rights granted to the insurance company against the appellant are set aside.

9. In terms of the interim orders, the appellant had been directed to make certain deposits with the trial court which shall now be refunded to him.

10. The statutory deposit, if made, shall also be refunded.

11. Both appeals and the applications filed therewith are disposed of.

R.K.GAUBA, J.

APRIL 24, 2018
nk