*   IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: May 07, 2018

\+   **MAC. APP. 519/2015**

THE ORIENTAL INSURANCE CO. LTD ….…Appellant
Through: Mr. JPN Shahi and Ms. Komal Dhingra, Advocates

Versus

MOHD. NIZAM & ORS. ….Respondents
Through: Mr. Vivek Bhardwaj and Mr. Ajay Bhardwaj, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Appellant is the insurer of TATA ACE bearing No. DL 1LM 0403, who is aggrieved by impugned Award of 31st March, 2015 vide which compensation of ₹3,75,000/- with interest @ 9% per annum has been granted to the first two respondents, who are parents of Master Dulare aged 5 years, who died in a vehicle accident on 31st December, 2011.

2. The facts as noticed in the impugned Award are:

> *"that on 31/12/2011 at about 16:30 hours deceased was playing in a Gali with other children in front of Daroga Dharma Kanta, Khasra No. 612, Near Kanch Godam suddenly without any indicator or horn, TATA ACE bearing No. DL 1LM 0434 came out of Godown abruptly in high speed and driven in zigzag manner toward the other road*

users/residential area etc. and hit Master Dulare due to which he fell down and offending vehicle crushed him under its wheel. Deceased was taken to GTB Hospital where he expired during his treatment at about 12:47 AM on 01/01/2012. The FIR No. 01/12 u/sec 279/304-A IPC was also registered at PS Sonia Vihar in this respect."

3. Motor Accident Claims Tribunal (hereinafter referred to 'the Tribunal') has relied upon the evidence of first respondent who had witnessed the accident and on the evidence of appellant's witness – Pradeep Kaushik R3W1 and on the evidence of driver and owner of the vehicle in question.

4. In this appeal, the challenge to impugned Award by learned counsel for appellant is confined to obtaining of the recovery rights qua the owner and driver of the vehicle in question.

5. Learned counsel for the appellant submits that as per the Detailed Accident Report (DAR), the driving licence of driver – Nitish Kumar was found to be fake and a notice under Order 12 Rule 8 of CPC was sent to driver and owner of the vehicle in question, but they had failed to produce the original driving licence and so, adverse inference ought to be drawn against them and recovery rights deserves to be granted to appellant qua owner and driver of the vehicle in question.

6. On the other hand, learned counsel for the owner of vehicle in question supports the impugned award and submits that the Tribunal while relying upon Supreme Court's decision in *Prem Kumari & Ors. vs. Prahlad Dev & Ors.* AIR. 2008 SC 1073 and the decision of High Court

of Himachal Pradesh in *United India Insurance Co. Ltd. Vs. Raj Bahadur alias Raju Bahadur* 2012 SCC OnLine HP 7034 has rightly put the liability to pay compensation on the appellant.

7. It is submitted by learned counsel for fourth respondent that the owner of vehicle in question had noticed that the driving licence in question was renewed in the year 2009 upto December, 2012 and so, there were no basis to doubt that it was a fake driving licence. It is also submitted by learned counsel for fourth respondent that the driving test of the driver was taken and since due diligence was exercised by the fourth respondent, therefore, the liability to pay the compensation is of the appellant and not of fourth respondent. It is further submitted by learned counsel for the fourth respondent that no adverse inference can be drawn against fourth respondent as the original driving licence was already with the police in a criminal case registered regarding this accident and the appellant was aware of it.

8. Reliance is placed upon decision of a Coordinate Bench of this Court in *Siddharth Grover Vs. Kusma Devi & Ors.* 2013 SCC OnLine Del 206 to submit that it is for the insurer to prove that driving licence was not genuine and since it is not so proved, therefore, this appeal deserves to be dismissed.

9. Upon hearing and on perusal of evidence on record and the decisions cited, I find that though driver of the vehicle in question had given his evidence by way of affidavit, but his cross-examination had not been sought by the appellant. In such a situation, the liability to pay the

compensation cannot be fastened upon driver or owner of the vehicle in question as no witness from the concerned Transport Authority, to prove that the driving licence in question was fake, has been got examined by the appellant. No witness has stepped into the witness box to prove the DAR. No adverse inference can be drawn against driver and owner of the vehicle in question, on account of non-production of original driving licence because the said licence was seized in the FIR case registered in respect of this accident. Coordinate Bench of this Court in *Sidharth Grover* (Supra) has denied recovery rights to the insurer as the factum of driving licence being not genuine, was not proved. Otherwise also, what is on record is the copy of driving licence in question which indicates that it was renewed. How can a fake driving licence be renewed? Be that as it may, since it is not proved on record that the driving licence in question is fake, therefore appellant cannot be granted recovery rights.

10. Consequentially, finding no substance in this appeal, it is dismissed.

(SUNIL GAUR)
JUDGE

MAY 07, 2018
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