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

% *Decided on: 18.09.2019*

\+ **MAC.APP. 790/2019, CM APPL. 41676/2019, CM APPL. 41677/2019, CM APPL. 41678/2019 & CM APPL. 41679/2019**

RISHI PAL SINGH ..... Appellant

Through: Mr. N.S. Dalal, Mr. D.P. Singh and Mr. Paramveer Dalal, Advocates.

versus

NEW INDIA ASSURANCE CO LTD & ORS ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant impugns the award of compensation dated 15.01.2019 passed by the learned MACT in Suit No. 471/2016 granting right of recovery to the insurer apropos the award of compensation to be paid by it. The reason for doing so is as under:-

> *"32. The respondent No. 3/ insurer pleaded breach of terms and conditions of insurance policy on the ground that the respondent No. 1 was not holding a valid driving license to drive the truck. Ld. counsel for the respondent No. 3 / insurer submitted that the driving license of the respondent No. 1 is 'fake'. R3W1 Vipin Kumar, Clerk from the office of Deputy Commissioner, Una, Himachal Pradesh deposed that DL No. 81916 in the name of Murtuja was not issued by their office. He proved a copy of DL register for the period from 19.04.2014 to 29.04.2014 Ex.R3W1/A.*

33. It is, therefore, proved that driving license of the respondent No. 1 vide DL No. 81916 is 'fake'. Registering and Licensing Authority, Una, Himachal Pradesh verified this fact vide report Ex.R3W2/D.

34. This is not the end of the matter. The respondent No. 2 appeared as R2W1. He deposed, in affidavit Ex.R2W1/A, that before employing the respondent No. 1, he had taken his driving test. He deposed that the respondent No. 1 was driving the vehicle satisfactorily. He was cross-examined by counsel for the respondent No. 3 / insurer. In his cross-examination, he deposed that the respondent No. 1 was employed with him since 3 years before the date of the accident. He reaffirmed that he had taken driving test of the respondent No. 1 before his employment. He placed his driving license Ex.R2W1/3. He deposed that he had obtained a copy of driving license of the respondent No. 1 and it was issued from Nagaland. He deposed that the said license is placed on the file. However, no such driving license is on file. The driving license of the respondent No. 1, on file of the tribunal, is issued by Licensing Authority, Una, Himachal Pradesh. The respondent No. 2, in affidavit Ex.R2W1/A and written statement, has not stated that he had seen driving license of the respondent No. 1 and believed it to be genuine. Moreover, the driving license, on file of the tribunal, does not pertain to Licensing Authority, Nagaland.

35. It is proved that the respondent No. 2 had not exercised due diligence while employing the respondent No. 1 as driver of the truck."

2. The learned counsel for the appellant relies upon the dicta of the Supreme Court in ***United India Insurance Co. Ltd. vs. Lehru & Ors.*** AIR 2003 SC 1292 to contend that if the insured/owner of the vehicle had seen the driving licence of the driver and tested his skills to drive the vehicle, that would itself be sufficient to absolve any liability apropos indemnification. The rationale behind the insured of this precedent is that, ordinarily, there

would be no reason for the vehicle owner to doubt the veracity of the driving licence shown to him, which on the face of it looked valid, and he cannot be expected to have verified its genuineness from the issuing authority. It is the appellant's case that he had seen the driving licence of the driver, tested his skills before employing him. According to him driving licence was issued by Government of Nagaland. He has not produced a copy of the said driving licence. On the contrary, the learned counsel for driver/respondent no. 1 stated that he had filed a driving licence issued by Government of Himachal Pradesh. However, this driving licence was found to be fake. In effect, the only driving licence produced could not be taken into consideration and any proof of the statement of the owner that he had seen the driving licence issued by Government of Nagaland also was not produced. In the circumstances, the learned Trial Court has rightly concluded that as there is no driving licence (issued by Government of Nagaland) on record, the appellant's contentions would have to be disregarded.

3. The learned counsel for the appellant refers to the dicta of the Supreme Court in ***Ram Chandra Singh vs. Rajaram and Others*** (2018) 8 SCC 799, which reads as under:-

> *"11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer."*

4. The learned counsel for the appellant submits that for absolving the liability of the insurer, two tests have been met: (i) that the owner knew that the driving licence was fake; (ii) yet he permitted the driver to drive the vehicle.

5. In the present case, the said test would not be applicable because the driving licence purportedly issued to the driver and shown to the vehicle owner, on the basis of which he was permitted to drive the vehicle, was issued by Government of Nagaland. The said driving licence was never brought on record. The driver however, submits that no such licence was issued to him. Therefore, the argument that the owner/appellant believed the said driving licence to be genuine, is untenable.

6. The Court finds no reason to interfere with the impugned order.

7. There is no merit in the appeal. It is accordingly, dismissed.

NAJMI WAZIRI, J

SEPTEMBER 18, 2019
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