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

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Decided on: 10.10.2019

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MAC.APP. 279/2018

THE NEW INDIA ASSURNACE CO LTD Appellant
Through: Mr. Gaurav Nair, Adv.

versus

CHANAN SINGH (DECEASED) THR LRS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 20.01.2018 passed by the learned MACT in Case No. 450464/2016, on the ground that it did not grant right of recovery to the appellant-insurer against the owner of the offending-insured vehicle. It is the appellant's case that by notice dated 17.11.2017 it had sought following information from the owner of the vehicle under Order 12 Rule 8 CPC:

"... Take note that you, the addressees, are required to produce valid and effective Driving license of Gopal Driver, Permit & Fitness certificate and Registration Certificate of Offending Vehicle bearing no. HR-38H-5698(Truck) which covers on the date of accident i.e. 29.04.2008..."

2. The said letter was never responded to nor were the requisite documents supplied to the insurer. The owner and driver of the vehicle did not appear before the learned MACT and they were proceeded *ex parte*.

The appellant's contention in this regard has been dealt with in the impugned order as under:

“....20. That, the vehicle in question was insured with R-3 i.e. The New India Assurance Company Ltd., and Ld. Counsel for the insurance company has argued that there a (sic) breach of the insurance policy as the fitness and permit has not been supplied by R-1 and R-2 despite service of the notice u/o 12 rule 8 of CPC and has also examined one witness R3W1 but this argument is immaterial on the ground that in the seizure memo, RC and Insurance policy has been seized by the IO at the time of investigation and the offending vehicle was registered with the Transport Authority, Faridabad, Haryana and the insurance company ought to have examine (sic) the witness from Transport Authority, Faridabad, Haryana to prove that the offending truck was being driven without permit and fitness but no such witness has been examined or summoned, therefore, there is no breach of any of the condition of the insurance policy and, therefore, the insurance company is liable to pay the compensation amount. Therefore, the insurance company is, thus, liable to indemnify the insured u/s 149(1) of MV Act and hence, liable to pay the compensation amount as awarded by the Court in favour of petitioner/ petitioner (sic)”

3. It is the appellant's contention that the defence taken by it was legitimate as it would not be liable to pay compensation unless there was a valid driving licence produced by the driver of the offending-insured vehicle driving at the time of the motor vehicular accident, as well as the fact that the vehicle should have been certified to be fit, to ply on public roads. The non-production of either of the two documents would have to be inferred adversely against the insured owner. He relies upon the dicta of this Court

in *ICICI Lombard GIC Ltd. vs Subhash & Ors.*, dated 19.01.2016 passed in MAC.APP. 105/2013, which held as under:

“...4. The contention of the insurance company in appeal is that the evidence adduced has not been properly appreciated and that the insurance company could not have done anything beyond calling upon the owner and driver of the vehicle through notice under Order 12 Rule 8 CPC to produce the driving licence, if there was one held by the driver. Reliance has been placed on the judgment of a learned Single Judge of this Court in New India Assurance Company Ltd. vs Sanjay Kumar & ors. ILR 2007 (II) Delhi 733...”

4. What emanates from the preceding discussion is that an insurer has the right to seek requisite information to determine whether there was breach of policy condition at the time of the motor-vehicular accident. If there was no driving licence produced by the driver Gopal, who was allegedly driving the vehicle when the said accident occurred, the appellant- insurer has every right to presume that he did not possess any driving licence, as well as the fact that the offending vehicle did not possess the requisite permit or fitness certificate to ply on a public road. The owner of the vehicle was given ample opportunity to prove otherwise.

5. In the circumstances, the presumption would be that there was breach of policy condition. Accordingly, the impugned order is modified to the extent that the appellant- insurer shall have right of recovery of the amount paid by it to the beneficiaries of the award, against the owner of the vehicle i.e. Mr. Akhilesh Singh Kasana, Respondent No. 7.

6. The appeal is allowed and disposed off in the above terms. The statutory amount along with interest accrued thereon be returned to the appellant.

NAJMI WAZIRI, J

OCTOBER 10, 2019/kk

