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

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Decided on: 22.11.2019

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MAC.APP. 456/2013

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. J.P.N. Shahi, Advocate.

versus

SMT SAVITA DEVI & ORS Respondents

Through: Mr. S.S. Jangra, Advocate for R-5.
Mr. Vikram Saini, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 456/2013, CM APPL. 8143/2013 & CM APPL. 26048/2018

1. At joint request, the appeal is taken up for disposal. This appeal impugns the award of compensation dated 04.08.2012 passed by the learned MACT in MACT No. 80/12/11. In view of the fresh evidence recorded by this Court apropos the driving licence which had been challenged by the appellant/insurer, it is the appellant's case that the driving licence which was presented by the driver of the offending vehicle before the learned Tribunal was a fake licence issued at Hyderabad. However, the facts of the case are that the said driver had produced a driving licence issued by the RTO at Kaithal, Haryana, in the year 2001, which was subsequently re-validated and is valid till the year 2021. On the date of the motor accident, he had a valid licence.

2. The Transport Sub-Inspector of the RTO Office, Kaithal, Haryana, has deposed before this Court on 24.07.2018 that they issued the driving licence after completion of all processes as required. It is correct that the above said licence was issued freshly after the letter dated 20.08.2001. In his cross examination, he had voluntarily stated that no driving test was taken prior to the issuance of the driving licence. However, the same was neither supported by any evidence on the record, nor anything had been produced by him before the learned Tribunal. It is not known whether the deponent had personal knowledge of the issuance of the driving licence, approximately 18 years prior to the deposition. Whether he was present at the time of issuance of the driving licence, approximately 18 years ago is not in doubt. The said statement is obviously without basis. Accordingly, this diversion from the main deposition requires to be and is hereby cast aside. Nevertheless, what is evident from his deposition is that the driving licence was issued after completion of all requisite processes. Therefore, the said licence would be valid.

3. The appellant contends that the employment of the driver was done on the basis of the driving licence issued by the Registration Authority in Hyderabad. The action of the Registration Authority cannot provide any leverage to the insurer to claim right of recovery against the owner or the driver. The letter received by the appellant through RTI (at page 51 of paper book) to the extent that Mahabir Singh has been employed on the basis of letter issued by RTO, Hyderabad, is something which the Haryana Roadways will look into and file a Status Report within eight weeks from today. However, since the driving licence was valid, respondent no.6 shall initiate appropriate measures in view of the deposition of Mr. K. Sai Kumar,

to the effect that there was no record of the driving licence, purportedly presented by the driver, but no particulars of the said licence had been found at the Hyderabad office.

4. The appellant's second argument is that some amount of contributory negligence ought to be fastened upon the deceased because he was boarding a moving bus. The impugned order clearly records that the eye witness i.e. PW-3 had denied that the deceased was trying to board a running bus or that he had died due to his own negligence:

“21. PW-3 examined on behalf of petitioners was Sh. Rajinder Yadav. He stated that he alongwith the deceased had started from Delhi for Alwar. From Delhi they first came to IFFCO Chowk and he had boarded bus no. HR-64-5698 and when deceased was on the foot board, the driver started the bus rashly and negligently. PW-3 stated that he shouted and asked the driver to stop but the bus ran over the deceased. He stated that the bus stopped at a distance on protests raised by him and other passengers and the deceased was taken to nearby hospital. He stated that his condition had also deteriorated due to hot weather and on seeing the plight of the deceased and he had reached Orbit Hospital after some time but the deceased had died by then. He deposed that his statement was recorded by the police certified copy of which was proved as Ex. PW3/A.

22. In cross examination he stated that when the bus had started with a jerk he had seen deceased falling down and coming under rear wheel of the bus. He said that he saw deceased having come under the rear wheel of the bus. He denied a suggestion that deceased was trying to board a running bus or deceased died due to his own negligence.”

5. The Court would note that nothing adverse has come apropos the statement of the said witness, that the deceased had fallen off from the bus

because it had started with a jerk and that it was being driven in rash and negligent manner.

6. In view of the above, there is no merit in the appeal. It is accordingly dismissed.

7. The amount deposited by the appellant shall be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

8. Let a Compliance Report be filed in terms of the above by 31st January, 2020 failing which, the case shall be put for directions.

NOVEMBER 22, 2019/kb

NAJMI WAZIRI, J

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