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

% *Judgment delivered on: 02.09.2019*

\+ **<u>MAC.APP. 251/2015</u>**

THE BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ..... Appellant

Through: Ms. Manu Kushwaha, Adv

versus

RAM CHANDER DHAWAN & ORS ..... Respondents

Through: Mr. S N Prashar, Advocate

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J (Oral)</u>

1. The award of compensation dated 24.05.2014 passed by the learned MACT in Suit No. 386/2008, is impugned on the ground that the driver of the TSR which caused the accident, resulting in injuries to a 67 year old man, did not possess a valid driving licence. The motor vehicle-TSR was insured with the appellant-insurance company. The appellant contends that it has no liability to pay the compensation, arising out of an accident owing to the wilful breach of the insurance policy, i.e. the owner/insured permitting the vehicle to be driven by a person who did not possess a driving license.

2. The insured/owner had stated that he had seen the driving licence of the driver at the time of engaging him the TSR and he was satisfied that the said driving licence was valid. The aforementioned document was produced

by him in his reply. However, it was noted that the driving licence did not specifically licence its holder to drive TSR/three wheeler vehicle.

3. This issue has been dealt with in the impugned order (para 12 at page 32 to 34 of the MAC APP 951/2014) as under:

> *"12. As per record, driver of the offending vehicle i.e R1 has clearly stated that at the relevant time he was having driving licence to drive light motor vehicles and admittedly, he was not having a driving licence to drive three wheeler scooter. It would be pertinent to discuss here that the insurance company (R3) has also examined Sh. Ashutosh Singh (A.M, Bajaj Allianz General Insurance Co. Ltd. 1, DLF Building, Moti Nagar, Delhi), as R3W3, who has inter alia testified that the R2 (i.e owner of the offending vehicle) had violated the provisions of M.V. Act by allowing R1 to drive the offending vehicle as R2 was holding a permit No. TL-1RG/7391 in her name with respect to the insured/offending vehicle which is Ex.R3W3/4 and has violated the conditions as imposed by notification No.F.S./MLO/Transport/03/28-33, dt. 19.08.2003, issued by transport authority auto rickshaw, Burari, Delhi as per which only the permit holder/R2 v/as peraiitted to drive the insured/offending vehicle. He has further testified that R1 was holding a driving licence bearing No. P96050282, issued on 13.05.1996, which was valid upto 12.05.2016, which is EX.R3W3/5, vide which R1 was authorized to drive LMV (private). He has also testified that the said licence was not applicable to drive the insured vehicle which was a passenger carrying commercial vehicle and since R2 had allowed R1 to drive the offending vehicle without a valid driving license and hence, the terms and conditions of the insurance policy were violated. During his cross-examination nothing is shown on record if R3W3 is not deposing truthfully or if at all R1 had a valid driving licence to drive the offending vehicle at the relevant time.*
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> *Accordingly, in view of above the only presumption that can be drawn in the given facts and circumstances is that R1*

was not having a valid driving licence to drive the TSR which is the offending vehicle, through he might be having a valid driving licence to drive LMV. As such the driving licence for LMV would not entitle R1 to drive three wheeler scooter. This issue is decided in favour of insurance company (R3) and against R1 and R2."

4. The Court is of the view that in so for as the driver had no valid driving licence and the TSR being a commercial vehicle, the owner ought to have satisfied himself that the driver held a valid driving licence for driving the three-wheeler. Hence, the learned Tribunal has rightly held that a valid driving licence of a Light Motor Vehicle (LMV) would not licence the driver to drive a three wheeler vehicle/TSR. It has awarded the compensation for the third party liability covered under the insurance policy but has simultaneously granted the insurer right of recovery against the insured/owner of the vehicle for breach of the policy conditions.

5. The Court finds no reason to interfere with the impugned order. The appeal is accordingly dismissed.

6. The statutory amount of Rs.25,000/- along with interest accrued thereon be returned to the insurance company.

NAJMI WAZIRI, J

SEPTEMBER 02, 2019
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