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

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Date of Decision: 16.04.2019

% **MAC.APP. 695/2014**

M/S KHOSLA TRANSPORT COMPANY Appellant

Through Mr. Ashok Popli, Advocate.

versus

PRAMOD SINGH & OTHERS Respondents

Through Mr. L.K. Tyagi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K. CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant-the owner of truck bearing no.DL1LG-B-4770, in short 'the offending vehicle', assails the impugned judgment/Award dated 11.10.2013 passed by MACT (North-East), whereunder, the right to recover the Award amount from the appellant has been granted to the insurer-the respondent no.3. In view of the restricted challenge to the impugned Award, the advertence to the other factual aspects to maintain the claim petition before the Tribunal, is not called for.

2. The Tribunal granted recovery right to the insurer with the observations and the conclusions drawn in the impugned judgment/Award, as follows:

“Liability

14. It is the contention of the insurance company that the respondent no. 1 was not having valid and effective DL. Insurance company i.e respondent no. 3 has examined one Sh. Hajinder Pal Singh, Assistant Oriental Insurance Company as R3W1. R3W1 in his evidence stated that the driver Vijay Kumar i.e respondent no. 1 was having DL to drive only LMV. The offending vehicle i.e truck bearing no. DL 1LGB 4770 falls under the category of HMV. R3W1 has brought on record the report of the investigator as Ex R3W1/2 and Ex. R3W1/3. As per the report of investigator he has visited the office of DTO, Muzaffar Pur and collected the particulars with regard to the DL of respondent no. 1. It is revealed that the respondent no. 1 has got license vide DL no. 401/03 which is valid from 09.05.2003 to 28.06.2010 and was allowed to drive LMV only. R3W1 also brought on record document issued by DTO, Muzaffar Pur, with regard to the license particulars of respondent no. 1. As per letter of DTO, Muzaffar Pur dated 17.06.2011, respondent no. 1 has got DL only to drive LMV.

15. It is clear from the record that the vehicle involved in the accident i.e DL 1LG B 4770 is a heavy goods vehicle. There is no evidence from respondents no. 1 & 2 to prove that respondent no. 1 was having a license to drive the heavy goods vehicle. In the above facts and circumstances, I am of the opinion that the respondent no. 1 was not having valid and effective DL to drive the heavy motor vehicle bearing no. DL 1LG B 4770 which is involved in the accident. There is also no evidence on behalf of respondent no. 2 to show that he has

taken proper care and caution with regard to the DL and capability of respondent no. 1 to drive heavy goods vehicle. Hence the insurance company has made out a case for recovery rights.”

3. The conclusions so drawn by the Tribunal are premised on the substantive deposition of R3W1. Though, R3W1 is not the author of the verification report Ex.R3W1/2, his deposition cannot be outrightly rejected for that reason. More so, when his deposition has not come to be challenged to any extent. Even no suggestion for his deposition being either unfounded or being not truthful, came to be given during his cross-examination, though, the appellant and the driver of the offending vehicle, were afforded opportunity for the purpose. Even, no other evidence or material, comes to be pointed out on behalf of the appellant, to not to believe his deposition. His deposition therefore, cannot be simply ignored. He proved the verification report Ex.R3W1/2 on record, and, the operative portion therefore, reads, as under:

“In respect to above referred Clam Case, I submitted the driving licence verification report earlier to your Office. Again on 07.10.11, I received an instruction to re-verify the D/L as the zerox copy of D/L bears that the said D/L is valid for LMV & HMV. Accordingly, the undersigned visited the Office of DTO Muzaffarpur. On my request, dealing asstt. produced the record register before me. I myself verified the D/L No. 401/03. Driver namely Sri Vijay Kumar is allowed to drive ‘LMV’ only.

DTO Certt. Memo No. 3349 dated 17.06.11 is true and genuine as per record register. The driver is allowed to drive 'LMV' only. He is not authorize to drive HMV."

In the foregoing report, the Investigator categorically records for having inspected the record of the Transport Department to say that the subject driving licence was issued to drive LMV only, and, the memo no.3349 dated 17.06.2011 issued by Transport Department, which forms part of this report, reads, as under:

"DISTRICT TRANSPORT OFFICE

MEMO NO. 3349

DATE 17/6/11

To,

**Gauri Skankar Singh.
Investigator.**

Driving Licence Particulars in respect of-

01. MOTOR DRIVING LICENCE NO. : 401/03

02. NAME OF DRIVER : Vijay Kumar.

**ADDRESS : S/o Sri. Ram Avtar Mandal
Gangbaso Runisaidpur
Sitamarhi**

03. DATE OF ISSUE

04. VALIDITY

PREVIOUS : 9.5.03 to 8.5.06

CURRENT : 29.6.07 to 29.6.10.

05. OLD D/L NO.

ISSUING AUTHORITY : D/o Muzaffarpur

06. TYPE OF LICENCE

07. ALLOWED TO DRIVE : LMV only

08. ENDORSEMENT, IF ANY

09. BADGE NO. : X

BADGE ISSUED ON : X

Sd/-

Seal & Signature of DTO”

The foregoing memo, categorically records for the subject driving licence to be meant for driving LMV only, and, not HMTV, which the offending vehicle was. In the face of material on record before the Tribunal, the finding returned by the Tribunal that the driving licence held by the driver was only to drive LMV, cannot be faulted with.

4. Mr. Popli, Id. Counsel for the appellant on his part submits that the deposition of R3W1 *ipso facto* was not sufficient to prove that the driving licence was to drive LMV only and not HMTV inasmuch as, the insurer failed to examine the Investigator, who had given the report Ex.R3W1/2. More so, in his submissions, the official from the Transport Authority, was not examined to prove the memo dated 17.06.2011, which forms part of the report Ex.R3W1/2. Such submission of Mr. Popli, in the considered opinion of this Court, would have had some merit, in the event, the deposition of R3W1 would have been extended challenge to any extent. As observed to earlier, not even an iota of any challenge, much less a suggestion, came to be given to him to belie his deposition. In other words, the deposition of R3W1 has gone wholly unchallenged and unrebutted and in view thereof, his substantive deposition cannot be just ignored, as contended by the Id.

counsel for the appellant. Then, this Court cannot lose sight of the fact that the proceedings under the Motor Vehicle Act are in the nature of inquiry and not a Civil trial attracting strict application of the rules of procedure and the evidence. Here, this Court would hasten to add that in the face of the unchallenged deposition of R3W1, the burden was cast upon the appellant to lead evidence in his defence and rebut the evidence that came to be adduced by way of the deposition of R3W1.

5. For the foregoing reasons, this Court finds no merit in the appeal and the same is dismissed.

A.K. CHAWLA, J.

APRIL 16, 2019

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