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

% *Decided on: 14.11.2019*

\+ MAC.APP. 675/2018

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Brijesh Bagga, Adv.

versus

AMRESH KUMAR & ORS (MSN LOGISTICS SOLUTION PVT. LTD ..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation, dated 20.04.2018 passed by the learned MACT in MAC Petition No. 4615/2016 which did not grant recovery rights against the owner of the vehicle. The right is sought on the ground that the owner knew fully well that the driving licence was fraudulently obtained. The driver of the vehicle Mr. Satender @ Sonu has deposed in his cross-examination on 11.04.2016 as under:-

> *"The driving license bearing no. SS-11240 was seized by the police from my possession, which is part of the DAR. The said license was prepared by our owner of the company. I have never seen the licensing authority Karnal. The above said license was given to me by my owner. It is correct that the said license was fake one and therefore police official filed the chargesheet u/s 279/304A/417/468/471 IPC. It is correct that when I joined my*

service with respondent no. 2 I have no driving license. I have seen the license on tlhe record on judicial file. My photo is also shown on the driving license. The same is Ex. R1W1/DX . I am not in the service of respondent no.2 It is wrong to suggest that I am deposing falsely."

2. *In his evidence in chief, the said deponent states inter alia:-*

"That the deponent states that the alleged accident was not caused by the negligent of the Respondent No.1 as the daughter of the petitioners was self negligent while crossing the road and she sustained the fatal injuries due to her own negligent and carelessness as there was no way of crossing the road and she came on the road suddenly from the brushes (sic)."

3. The owner of the vehicle had sought shelter under the insurance policy on the ground that at the time of employment of the said driver he had seen the driving licence which on the face of it appeared to be genuine and he had tested the skills of the driver before employing him. Therefore, in terms of dicta of the Supreme Court in ***United India Insurance Co. Ltd. vs. Lehru & Ors.,*** AIR 2003 SC 1292, he would be protected from any liability. He has deposed in his written statement as under:-

"4. That even otherwise, the answering respondent is not liable to pay any compensation to the petitioners whatsoever as the vehicle is insured with the IFFCO-TOKIO General Insurance Co. Ltd., IFFCO Tower, Plot No.3, Sector-29, Gurgaon, Haryana. Further, respondent No. 1 was holding valid Driving License at the time of the alleged accident. The claim petition as such is liable to be dismissed against the answering respondent.

5. That at the time of employment of the respondent No.1, respondent No.2 had checked the Driving License of respondent No.1, which was apparently found to be genuine. Respondent No.2 further confirmed and assured that the respondent No.1 is a skilled Driver, by taking his Test Driver along with a qualified

Driver and after setting satisfied, respondent No.2 kept the respondent No.1 upon its employment. Hence, the present petition is liable to be dismissed and the compensation, if any, shall be paid by Insurance Company alone and the answering respondent has no liability towards any compensation."

4. However, the appellant contends that insofar as the driver had specifically stated that he never appeared before the Licence Issuing Authoriy at Karnal, therefore, he admits that the said document was fraudulently obtained. It was for the owner of the vehicle to cross examine his own driver, as the deposition implicated the owner. But his testimony went unchallenged. The owner accepted his driver's statement that the said driving licence was fraudulently obtained. His stand is not as innocent as is sought to be made out and to seek shelter under the principles enunciated in ***Lehru*** *(supra)*.

5. It was proven through an officer of the Licence Issuing Authority, Karnal, that the driving licence was never issued in favour of the driver (respondent no.2). The owner never led any evidence in this regard. There is no reason to doubt the statement of the driver. The owner did not challenge the statement of the driver, coupled with the fact that the driving licence was fake and been so proven by the Licencing Authority. According to the DAR submitted before the learned MACT, the driving licence was fake. What emanates from the above is that at the time of employment, the driver did not have a driving licence. It was obtained much later from an Authority before whom the said driver never appeared nor were his driving skills tested. The said deposition clearly implies that the owner knew fully well that the licence was fraudulently obtained. He would fall

under the exception carved out in ***Lehru*** *(supra)*. In the circumstances, the owner of the vehicle would be liable for re-payment of the amount indemnified by the insurer. The impugned order is modified to the aforesaid extent. The insurer is granted right of recovery against the owner of the vehicle.

6. The appeal is allowed in the above terms.

7. The Court would note that the impugned order has not granted anything towards 'loss of love and affection and 'loss of consortium' to the claimant/father who lost his college going daughter who was a 1st year student at Miranda House, Delhi University. She must have been barely 19 years of age and had a whole life of promise ahead of her but she was mercilessly extinguished by the rash and negligent driving of the offending vehicle. The claimant/father is entitled to and is hereby awarded compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively in terms of the dicta of Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546.

8. Let the additional amount of Rs. 90,000/- along with interest @ 9% shall be paid by the appellant to the aforesaid claimant directly into his bank account with due intimation to him. Compliance Report in this regard shall be filed within four weeks from the date of receipt of the copy of this order.

9. List for compliance on 20.12.2019.

NAJMI WAZIRI, J

NOVEMBER 14, 2019
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