

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

%

+ **FAO 445/2018 & CM APPL. 39418/2018**

Sh. SUKESH TYAGI

S/o- Sh. J.N. Tyagi

R/o-WZ-4A, Village Keshopur

Vikas Puri, New Delhi.

..... Appellant

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Aman Bhalla, Mr. Navneet
Thakran, Mr. Abhimanyu Pedhu and
Mr. Aditya Awasthi, Advocates.

versus

Sh. VIKAS BHASIN

S/o- Sh. Virender Kumar Bhasin

R/o- H. No.31, Pocket B 8, Sector-3

Rohini, Delhi-110085

..... Respondent No.1

Through: Mr. O.P. Mannie, Advocate with
Mr. Manish Maini, Advocate.

The Oriental Insurance Co. Ltd.

Through its Delhi Regional Office-I

F-14, Connaught Circus

New Delhi – 110001

..... Respondent No.2

Through: Mr. A.K. Soni, Advocate with
Mr. Pavan Kumar Vashishth,
Advocate.

+ **MAC.APP. 217/2017 & CM APPL. 9116/2017**

THE ORIENTAL INSURANCE CO. LTD.

Through its Delhi Regional Office-I
F-14, Connaught Circus
New Delhi – 110001

..... Appellant

Through: Mr. A.K. Soni, Advocate with
Mr. Pavan Kumar Vashishth,
Advocate.

versus

Sh. VIKAS BHASIN
S/o- Sh. Virender Kumar Bhasin
R/o- H. No.31, Pocket B 8, Sector-3
Rohini, Delhi-110085

..... Respondent No.1

Through: Mr. O.P. Mannie, Advocate with
Mr. Manish Maini, Advocate.

Sh. RAJESH
S/o Kishori Lal Kumar
H.No. RZ-33, Nand Vihar Colony,
Village Kakrolla, New Delhi-110043

..... Respondent No.2

Through:

SUKESH TYAGI
S/o Sh. J. No. Tyagi
R/o WZ-4A, Village Keshopur,
Vikas Puri, New Delhi.

..... Respondent No.3

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Aman Bhalla, Mr. Navneet
Thakran, Mr. Abhimanyu Pedhu and
Mr. Aditya Awasthi, Advocates.

+ **MAC APPL. 969/2017**

VIKAS BHASIN

S/o- Sh. Virender Kumar Bhasin
R/o- H. No.31, Pocket B 8, Sector-3
Rohini, Delhi-110085

..... Appellant

Through: Mr. O.P. Mannie, Advocate with
Mr. Manish Maini, Advocate.

versus

The Oriental Insurance Co. Ltd.
Through its Delhi Regional Office-I
F-14, Connaught Circus
New Delhi – 110001

..... Respondent No.1

Through: Mr. A.K. Soni, Advocate with
Mr. Pavan Kumar Vashishth,
Advocate

Sh. RAJESH
S/o Kishori Lal Kumar
H.No. RZ-33, Nand Vihar Colony,
Village Kakrolla, New Delhi-110043

..... Respondent No.2

Through:

SUKESH TYAGI
S/o Sh. J. No. Tyagi
R/o WZ-4A, Village Keshopur,
Vikas Puri, New Delhi.

..... Respondent No.3

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Aman Bhalla, Mr. Navneet
Thakran, Mr. Abhimanyu Pedhu and
Mr. Aditya Awasthi, Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

1. The appellant in FAO 445/2018 is the registered owner of the offending truck bearing registration no. DL-1GB-6068, which was allegedly driven by Sh. Rajesh Kumar, in a rash and negligent manner resulting in a motor vehicular accident that took place on 15.01.2010 at Ganesh Dass Khatri Marg near Apni Rasoi, Ganesh Nagar, Tilak Nagar, Delhi causing grievous injuries on the person of Vikas Bhasin, respondent No.1 herein, which was the basis of the claim for compensation, instituted as accident claim case (case no. 77335/16), by injured, respondent No.1.

2. The appellant in FAO 445/2018 and Sh. Rajesh Kumar, respondent No.2 herein in MAC APP. Nos.217/2017 and 969/2017 were impleaded as respondent Nos.2 and 1 respectively before the tribunal. Admittedly, the offending truck was being insured against third party risk for the period in question. During the course of proceedings, the appellant in FAO 445/2018 and its driver i.e. respondent No.2 in in MAC APP. Nos.217/2017 and 969/2017 remained absent before the tribunal and, thus, were set ex-parte on 04.04.2016.

3. The insurer had taken plea of breach of terms and conditions of the insurance policy. The insurer had led evidence in this regard by examining Ms.Promila Bisht, Assistant Manager (R3W1), Sh.Virender Batra, Investigator of Insurance Company (R3W2) and Sh.Hemant Singh, Junior Assistant, RTO Office Agra (R3W3). Ms.Promila Bisht (R3W1), inter alia, deposed that the appellant in FAO 445/2018 was called upon to produce all

the necessary documents, by serving a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) to which he had not responded.

4. The tribunal, vide Award dated 19.11.2016, allowed the claim petition and awarded a sum of Rs. 50,42,000/- to the claimant with interest @ 9% per annum from the date of filing of the petition till realization. The tribunal concluded that since the insurance company had admitted the policy, it will initially satisfy the Award and recovery rights were granted against the appellant in FAO 445/2018 and in favour of the insurer.

5. The appellant in FAO 445/2018 moved an application under Order 9 Rule 13 CPC, inter alia, contending that he was never served with the summons. The said application was dismissed by the tribunal, by order 18.08.2018.

6. Mr. Kirti Uppal, learned senior counsel appearing on behalf of the appellant in FAO 445/2018 submits that a valid deriving licence did exist on the date of incident. He further submits that the appellant did not get opportunity to prove the driving license and prays that the appellant be permitted to adduce additional evidence under Order 41 Rule 27 CPC.

7. Learned counsel appearing on behalf of the Insurance Company objects the contention made by learned senior counsel for the appellant and submits that firstly, the impugned order dated 19.11.2016 has to be set aside and then opportunity be granted to the appellant to lead evidence.

8. Learned counsel appearing on behalf of the claimant has opposed the contention of learned senior counsel for the appellant and counsel for the insurance company and submits that allowing the appellant to adduce additional evidence would amount to re-trial of the case.

9. Looking into the facts and circumstances, since the determination of valid driving license is a *sine qua non* in the instant case, therefore, the impugned Award dated 19.11.2016 is set aside and the subsequent order dated 18.08.2018 too is set aside and the matter is remanded to the tribunal for the limited purpose of adducing additional evidence under Order 41 Rule 27 CPC as to whether valid driving license existed on the date in question. Thereafter, the tribunal is directed to pass a fresh Award within a period of three months from the date of proceeding of the matter.

10. The awarded amount so deposited in the form of FDRs shall be subject to the outcome of the Award which is to be passed by the Tribunal. Statutory amount be refunded.

11. The parties are directed to appear before the tribunal for the above aspect on 14th February, 2019.

12. The appeals are disposed of accordingly. All pending application(s) (if any) also stand disposed of.

13. One copy of this order be placed in MAC.APP. 217/2017 & MAC APPL. 969/2017.

14. Copy of this order be given *dasti* under the signatures of Court Master.

JANUARY 16, 2019

I.S.MEHTA, J

