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

%   *Decided on: 04.03.2020*

+   MAC.APP. 960/2019, CM APPL. 54829/2019 & CM APPL. 54830/2019

PARMINDER KAUR   ..... Appellant

Through: Mr. Manoj Kumar and Mr. Harsh Binjola, Advocates.

versus

KAMAL KAPOOR & ORS (SHRIRAM GENERAL INSURANCE CO LTD)   ..... Respondents

Through: Mr. Arun Yadav, Advocate for insurance company.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

1. This appeal impugns the award of compensation dated 31.05.2019 passed by the learned MACT in MACP No. 5045/2016, on the ground that albeit the vehicle was issued to a person, who had a valid driving licence, the vehicle was clandestinely taken away from the possession of the person to whom it was leased/rented out.

2. The appellant is the owner of the offending vehicle. It was rented out to a driver who had a valid driving licence. It is contended that when the vehicle was parked near a Gurudwara, it was clandestinely taken away from

the said site, by a relative of the person who had taken it on rent. The vehicle, being driven unauthorizedly by the said second person-relative, met with an accident.

3. The impugned order has dealt with the issue as under:

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> *38. The owner of the offending vehicle has raised the defence that the vehicle was unauthorizedly taken out by respondent no. 1 from the custody of her driver Ramkaran. The respondent no. 2 to prove this issue has filed her evidence by way of affidavit Ex. R2W1/A and deposed in terms of this defence. However, the deposition of respondent no. 2 on this issued is required to be rejected outrightly. It is admitted case of the respondent no. 2 that vehicle was taken by her driver Ramkaran at his residence and was parked at his residence. Therefore, the respondent no. 2 has failed to explain how she gained the knowledge that the vehicle was taken out unauthorizedly by respondent no. 1. The respondent no. 2 was not the witness of alleged act of taking away of offending vehicle by the respondent no. 1. The respondent no. 2 was not the witness of alleged act of taking away of offending vehicle by the respondent no. 1. The respondent no. 2 has failed to examine any witness who has seen that the vehicle was taken away unauthorizedly by the respondent no. 1. The respondent no. 2 has failed to produce any other evidence to support or corroborate the defence raised by her in this regard. Ld. Counsel for respondent no. 2 has relied upon following judgment passed by Hon'ble Delhi High Court in case titled "Oriental Insurance Co. Ltd. Vs. Sudhama Prasad & Ors.", in MAC APP. No. 50/05, decided on 04.05.2012 and judgments passed by Hon'ble Supreme*

Court of India in case titled "Sohan Lal Passi Vs. P. Sesh Reddy & Ors.", in Civil Appeal Nos. 9368-69/1996, decided on 17.07.1996 and in case titled "Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravandan & Ors.", in C.A. No. 1386(N) of 1973, decided on 01.04.1987. However, the aforesaid judgments are not applicable to the facts of the present case.

39. In view of the aforesaid discussion, I find substance in the plea raised on behalf of the insurance company that for want of valid and effective DL in favour of respondent no. 1 being proved on record, it would be termed as breach in the terms and conditions of insurance policy on the part of insured i.e. respondent no. 2. Thus, insurance company is entitled to recovery rights against the respondent no. 2. (Reliance placed on decision dated 26.09.2017 in FAO no.7555/2015 in the matter titled as "MS Middle High School and another Vs. Usha and others" by Hon'ble High Court of Punjab and Haryana and as upheld by Hon'ble Apex Court in SLP no. 31406/2017 titled as "MS Middle High School Vs. HDFC ERGO General Insurance Company Ltd. & Others" decided on 22.11.2017). Issue no. 2 is decided accordingly.

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4. The insurance contract is governed by the specific terms contained therein. In particular the condition, that the driver of the vehicle must have a valid driving licence. Insofar as the driver did not hold a valid driving licence at the time of accident, irrespective of who was authorized to drive it, the insurer cannot be held liable for indemnifying any loss, which may have occurred by the driving of the vehicle in breach of policy conditions.

5. Accordingly, if the insurer is held not liable for the awarded amount, then as per settled law, the said amount shall be recovered from the registered owner of the vehicle. In the circumstances, for the impugned order to hold that the appellant is liable to pay the awarded amount cannot be faulted with.

6. The appeal is without merit and it is accordingly dismissed, alongwith pending applications.

NAJMI WAZIRI, J

MARCH 04, 2020
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