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

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Decided on: 10.02.2020

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MAC.APP. 388/2016 & CM APPL. 17036/2016

ARVIND KUMAR & ANR

..... Appellants

Through: Mr. Ajay Verma and Mr. Sanjay
Kumar, Advs.

versus

M/S SHRIRAM GENERAL INS CO LTD & ANR Respondents

Through: Ms. Meenakshi Midha, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the Award dated 14.02.2014 in Suit No. 129/12, insofar as it has granted right of recovery to the insurer. The reason for doing so was that the alleged driver-Mr. Avinish Kumar s/o Mr. Krishna Kumar, held a driving licence for driving a Light Motor Vehicle but the same was not endorsed to drive a commercial vehicle. The learned counsel for the appellant submits that in view of the dicta of the Supreme Court in *Mukund Devangan vs. Oriental Insurance Co. Ltd.* (2017) 14 SCC 663, which was followed in *M.S. Bhati vs. National Insurance Company Ltd.* (2019) 12 SCC 248, it is settled law that the holder of a valid driving licence for driving a light motor vehicle can drive a vehicle whose gross unladen

weight does not exceed 7,500 kgs. The position of law obtains even today. In view of the above, the reason for granting rights of recovery is negated. The impugned order is set aside apropos the right of recovery granted to the insurance company.

2. The learned counsel for the insurer further contends that there is a doubt about the identity of the driver of the offending vehicle. Albeit, the DAR and the FIR record the driver of the vehicle as Mr. Avinish Kumar. He did not file a reply in the MACT proceedings, instead a joint reply was filed by Mr. Avinish Kumar and Mr. Surender Singh, who was supposedly the driver of the vehicle. However, if Mr. Surender Singh was not impleaded, how could he file a reply. Furthermore, Mr. Avinish Kumar had stated in his cross-examination that Mr. Surender Kumar was in fact the driver of the offending vehicle, therefore, his driving licence ought not to have been examined and the same could not be taken as the relevant one. At best, the driving licence of Mr. Surender Kumar ought to have been examined. However, the Court would note that as per the records, Mr. Avinish Kumar had pled guilty before the learned Court in the criminal proceedings emanating from the FIR and had admitted that he was driving the vehicle at the time of the motor accident. Therefore, in view of his own said clear admission before a Court of law of his being the driver, no further proof for his involvement is required. Accordingly, the said contention is untenable and is rejected.

3. The appeal, alongwith pending application, is disposed-off in the above terms.

4. The monies deposited by the appellant, alongwith interest accrued thereon including, the statutory amount, alongwith corresponding interest accrued thereon, shall be returned to the appellant.

NAJMI WAZIRI, J

FEBRUARY 10, 2020

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