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

% Judgment delivered on: 11th March, 2022

+ MAC.APP. 73/2022

M/S GARG ROAD LINES & ANR. Appellants

versus

M/S NATIONAL INSURANCE CO. LTD. & ORS..... Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Mayank Khurana, Advocate.

For the Respondent: Mr. Manoj Ranjan Sinha and Mr. Aaditya,
Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM. APPL. 12378/2022 (Exemption)

Allowed, subject to all just exceptions.

CM. APPL. 12379/2022 (condonation of delay)

1. It is contended in the application that the appellants were proceeded exparte on 18.02.2016 and since the vehicle was insured the appellants were under the impression that the case would be defended by the insurance company. It is further submitted that the

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counsel who was engaged did not inform them about the progress of the case.

2. In any event in a connected appeal being MAC. APP. 54/2022, emanating out of the same accident, but a different tribunal, this Court has remitted the matter for taking fresh evidence limited to the aspect of grant of recovery rights which was granted on the sole ground that the driving licence was fake.

3. In that view of the matter, it would be in the interest of justice to condone the delay and direct both the Petitions to be taken together.

4. Accordingly, the application is allowed.

MAC.APP. 73/2022 & CM. APPL. 12377/2022 (stay)

1. Appellant impugns award dated 20.02.2018 to the limited extent that it grants recovery rights to respondent No.1/insurance company against the appellant.

2. The impugned award has also been impugned by the insurance company on its merits. However, since the appeal pertains only to grant of recovery rights to the insurance company, notice is restricted only to the insurance company

3. With the consent of parties, the appeal is taken up for final



disposal.

4. Learned counsel for appellant submits that the Tribunal has erred in holding that there was no valid driving license in favour of the driver, who was driving the offending vehicle and that the driving license was fake.

5. He draws attention to para 6.1 of the impugned order where the testimony of an officer from the Transport Authority (R3W1, Sanjay Kumar Jha) has been referred to wherein he has deposed that there the Driving Licence was issued in the name of one Sudhir Kumar and not Anoop Kumar.

6. Learned counsel for appellant relies on the website of the RTO, wherein it is being shown that the driving license number 530/FKB/2006 is issued in the name of Anup Kumar on 22.01.2003.

7. It is noticed from the testimony of R3W1 that he has deposed about licence no. 530/Farrukhabad/2003 whereas the licence no. of the driver of the offending vehicle is 530/Farrukhabad/2006. The website even today shows that the driving license was issued on 22.01.2003 in the name of Anup Kumar.

8. Further, learned counsel for petitioner contends that the driver had undergone the requisite training for transporting hazardous



goods and as such there was no specific requirement for endorsement on the license. He relies on the judgment of a coordinate bench of this court dt. 12.10.2017 in MAC.APP. 1043/2016, titled “*National Insurance Co. Ltd. Vs. Sonia Mittal & Others*”.

9. Learned counsel further submits that the permit could not be produced before the Tribunal. However, he has filed the same before this Court.

10. Learned counsel prays that the matter be remitted on the limited extent of grant of recovery rights to enable the appellant to lead further evidence.

11. Contention of learned counsel for the insurance company is that the appellant did not produce the relevant records before the Tribunal and accordingly it has caused prejudice to the insurance company and in case the matter is to be remitted, appellant should be put to some terms.

12. In view of the fact that the impugned award relies on the testimony of the witness from the RTO, who has referred to a different number and the website of the RTO is even as on date showing the same having been issued and further the fact that the appellant has produced the certificate of training as well as the permit of the said vehicle valid during the relevant period, it is a fit case for



a remit to the Tribunal on the limited extent of the grant of recovery rights against the appellant.

13. Accordingly, the appeal is allowed to the limited extent that it grant recovery rights against the appellant, subject to payment of costs of Rs.25,000/-.

14. Learned counsel for the parties submit that in another appeal being MAC. APP. 54/2022 emanating out of the same accident, similar order of remit has been passed for leading additional evidence on the same set of documents.

15. Accordingly, in exercise of powers under Section 24 of the Code of Civil Procedure, the proceedings in this appeal are also directed to be transferred and to be listed before the same Motor Accidents Claims Tribunal before whom the proceedings emanating out of MAC. APP. 54/2022 have been remitted.

16. Parties shall appear before the Tribunal for directions on 25.03.2022. The Tribunal shall thereafter endeavour to conclude the recording of evidence on the limited aspect of grant of recovery rights and pass a fresh award expeditiously.

17. The appeal is disposed of in the above terms.

18. The statutory deposit made by the appellant be adjusted



towards the costs to be deposited by the appellant. Accordingly, the Registry is directed to pay the said amount of Rs. 25,000/- alongwith interest, if any, accrued thereon to the Horticulture Department of the CPWD for being utilized for infrastructural development in the Budha Jayanti Park.

19. It is clarified that this order will have no bearing on the rest of the award passed by the Tribunal and shall be without prejudice to the appeal filed by the insurance company and the defence of the claimants therein.

SANJEEV SACHDEVA, J

MARCH 11, 2022
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