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

Date of Decision:- 13.01.2023

+ **MAC.APP. 24/2023 & CM APPL 1722-24/2023**

SHEKHAR NIJHAWAN

..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD. & ORS.

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 seeks to assail the award dated 26.11.2021 passed by the learned Motor Accident Claims Tribunal in MACP No. 5171/2016. Vide the impugned award, the learned Tribunal, while awarding a compensation of Rs.16,32,700/- in favour of the claimants, has granted recovery rights to the insurer.
2. The appellant, who is the owner of the car/offending vehicle, bearing registration no. DL-4CAH 6055, has approached this Court being aggrieved by the grant of recovery rights in favour of the insurer.
3. It may be noted that recovery rights have been granted in favour of the insurer by the learned Tribunal after taking into account the fact that the offending vehicle, at the time of the accident, was admittedly being driven by the appellant's minor son, who did not possess any driving licence. The learned Tribunal, therefore, came to a conclusion that the appellant, by permitting his minor son to drive the vehicle, acted in breach of the terms of the insurance policy. Consequently, the insurer was granted recovery

rights by the learned Tribunal

4. The sole contention of learned counsel for the appellant is that the learned Tribunal has erred in granting recovery rights to the insurer as it failed to appreciate that the offending vehicle was being driven by the appellant's minor son without his knowledge and permission and therefore, it could not be said that the appellant had wilfully breached the terms of the insurance policy. He submits that at about 11:45 AM on 06.06.2013, i.e., the time of the accident, the appellant was in his office when his minor son took the keys of the car from his bed side drawer which was inadvertently not locked at the relevant time. His plea, thus is that since the car was taken out by the appellant's minor son without his permission and knowledge, the appellant cannot be said to be in wilful breach of the terms of the insurance policy.

5. On the other hand, learned counsel for the insurer submits that the learned Tribunal has rightly rejected the appellant's plea that the car was being driven by his minor son without his knowledge. He submits that the appellant was aware that his son did not possess a valid driving licence and therefore, the Tribunal has rightly granted recovery rights to the insurer.

6. As the only plea of the appellant is that the learned Tribunal has erred in coming to the conclusion that he was aware of the insured car being driven by his minor son, it could not be said that there was any wilful or conscious breach of the terms of the insurance policy on his behalf, it may be appropriate to first note the relevant extracts of the impugned award on this aspect. The same read as under:

"39. Though in his affidavit Ex. R1 W1 /A, the respondent no.1 stated that he was getting late for attending his tuition class and his

father was also not present, he took keys of car from the drawer without knowledge, consent and permission of his father. However, in the cross-examination he admitted that he had been driving car off and on for the last about one year prior to 06.06.2013 and he had driven car no. DL-4CAH-6055 on two occasions prior to 06.06.2013.

40. Respondent no.2/registered owner has also appeared in witness box as R2W1. He also deposed that he never allowed respondent no.1 to drive his car and respondent no.1 in his absence without his consent took his car. However, in reply to notice under Section 133 of Motor Vehicles Act Ex. R2W1/R-2, he has not disclosed that the alleged vehicle was being driven by respondent no.1 without his consent. He has also admitted in the cross-examination that except the present proceedings he has not given it in writing either before police authority or before concerned Juvenile Justice Board that his son had taken the aforesaid car without his knowledge, consent and permissions. Hence, the defence as taken by respondent no.2 is after thought and having been taken just to escape the liability. The parents has to keep proper control over the vehicles so that their minor children does not drive the vehicle even in their absence. Recently the Parliament has implemented strict punishment to the parents who allow their minor children to drive the vehicle. If such type of contentions are allowed to be accepted, then no person can be held liable in such situation. The judgment (supra) relied upon by Ld. counsel for respondent no.2 is not applicable to the facts of present case because in the above said cases it has been established by the respondent that the vehicle was driven by minor without the express or implied authority of registered owner whereas in the present case the material on record speaks that the respondent no.1 was driving the alleged offending vehicle either with the express authority or implied authority of registered owner. In view of aforesaid, the defence taken by respondent no.2/registered owner holds no ground and same is dismissed.”

7. In the light of these findings, I am of the view that the learned Tribunal was justified in not accepting the appellant’s version that the keys of the insured vehicle were taken by his minor son from his bed side

drawer without his knowledge and permission. Once the appellant, despite being aware that his son was a minor child, left the keys of his car at home and has failed to give any explanation as to why the keys of the car at home were left unattended when he himself was not there, the defence being taken by the appellant is apparently an afterthought in an attempt to somehow to escape his liability. Even otherwise, the appellant did not lead any independent witness in support of his plea that the car was being driven by his minor son without his knowledge and permission.

8. I may also note that as observed by the learned Tribunal, this plea of his minor son having taken the car without his permission, was not even taken by the appellant either before the concerned police authority or the Juvenile Justice Board. In a matter like this, when the parents of minor children permit him/her to drive a motor vehicle, not only they put the lives of their own children in danger but also endanger the life of common citizens. In the present case, the deceased Mr. Harinder Kumar, a young man of 42 years lost his life only because the appellant did not take appropriate steps to ensure that his vehicle is driven only by a person holding a valid driving licence. This Court, therefore, cannot condone such an act of the appellant and fasten the liability on the insurance company when it is evident that the terms of the insurance policy were breached by the appellant himself.

9. The appeal being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

JANUARY 13, 2023/acm