



2023:DHC:7442



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 10.10.2023*+ **MAC.APP. 210/2021 & CM APPL. 21038/2021****IFFCO TOKIO GENERAL INSURANCE COMPANY LTD.**

..... Appellant

Through: Mr.Pankaj Gupta & Ms.Suman
Bagga, Advs.

versus

MRS SUMAN & ORS.

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 27.03.2021 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACT No. 403/2018 titled *Mrs. Suman & Ors. v. Sh.Satyapal & Ors..*

2. Before the learned Tribunal, it was the case of the claimants, that is the respondent nos.1 to 6 herein, that the deceased, namely Sh.Suraj Kumar, on 20.07.2018 at about 3 p.m. was travelling on a Tractor bearing no. RJ-05-RA-5863 and upon reaching near Khushboo Chowk, Gurugram, met with an accident with a Cantor bearing registration no. HR 38 T 5403

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(hereinafter referred to as 'offending vehicle') which was being driven by the respondent no.7 herein in a rash and negligent manner and at a high speed. Due to the impact of the accident, the deceased fell on the road and sustained grievous injuries. Thereafter, he was removed to Paras Hospital, Gurugram, from where he was taken to Safdarjung Hospital, New Delhi. He unfortunately succumbed to his injuries during the course of treatment.

3. The limited challenge of the appellant to the Impugned Award is on the ground that the learned Tribunal has erred in not granting a right to recover the compensation paid to the respondent nos.1 to 6 herein, from respondent no.8, that is, the owner of the offending vehicle.

4. The learned counsel for the appellant submits that before the learned Tribunal, the appellant had taken a plea that the offending vehicle was being driven by a driver not holding a valid driving licence, and further the offending vehicle did not have a fitness certificate or a valid permit. He submits that, in fact, even the FIR No. 0323, registered at Police Station DLF Phase-I, dated 20.07.2018, records that the driver of the offending vehicle was not able to produce a driving licence, Registration Certificate (in short, 'RC'), or the insurance for the offending vehicle. He submits that the respondent nos.7 and 8 did not enter appearance before the learned Tribunal nor lead any evidence. He further submits that, on the other hand, the appellant on its own investigation found that the licence of



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respondent no.7 for driving a transport vehicle was valid till 18.05.2018 and thereafter, was renewed only on 05.09.2018. Therefore, as on the date of the accident, which occurred on 20.07.2018, the respondent no.7 was not holding a valid driving licence. He submits that even otherwise, the respondent nos.7 and 8 did not produce a valid fitness certificate or the permit for driving the vehicle at a public place. He submits that the appellant had also issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (in short, 'CPC') to the respondent no.8, which the learned Tribunal disregarded only because the appellant failed to produce the delivery receipt thereof.

5. In spite of service of notice, none has appeared for the respondent nos. 7 and 8. They are proceeded *ex parte*.

6. I have considered the submissions made by the learned counsel for the appellant.

7. The FIR records that the respondent nos.7 and 8 were unable to produce the driving licence, RC and other documents before the Police. The appellant had also taken this plea in its written statement before the learned Tribunal. The respondent nos.7 and 8, however, chose not to appear before the learned Tribunal nor lead any evidence nor supplied these documents. The appellant made inquiries on its own and found that the driving licence of respondent no.7 was not valid as on the date of the accident, not having been renewed within the grace period stipulated in Section 15 of the Motor Vehicles Act, 1988,

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as was then applicable. Even if this report is to be ignored, the onus of proving that respondent no.7 was holding a valid driving licence as on the date of the accident was on the respondent nos.7 and 8, which they failed to do. Reference in this regard may be had to the judgment of the Supreme Court in ***Beli Ram v. Rajinder Kumar & Anr.***, 2020 SCC OnLine SC 769.

8. The appellant had also issued notices under Order XII Rule 8 of the CPC to the respondent to produce the driving licence, the permit, and the fitness certificate for the offending vehicle. The appellant produced before the learned Tribunal the speed-post receipts for dispatch of the same. The learned Tribunal, however, refused to take cognizance of this notice only for the reason that the appellant had served these notices late and the delivery receipt thereof was not shown.

9. In my opinion, merely because the notice was issued later, cannot be a ground to disregard the notice and the effect thereof. As noted hereinabove, the respondent nos.7 and 8 had chosen to remain *ex parte* before the learned Tribunal.

10. As far as the delivery receipts are concerned, in terms of Section 114 (f) of the Indian Evidence Act, 1872, once it is shown that the notices have been duly sent by way of speed post, they shall be deemed to have been served unless received back unserved.

11. In view of the above, I hold that respondent nos.7 and 8 have failed to prove that respondent no.7 had a valid driving

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licence as on the date of the accident. They have also been unable to prove that they have a valid fitness certificate and the permit to drive the vehicle at the place of the accident, thereby making the appellant entitled to a right to recover the compensation paid to the Claimants from the respondent no. 8 herein, in view of the judgment of this Court in ***Gurmeet Singh v. The New India Assurance Company Ltd. & Ors.***, Neutral Citation 2023:DHC:7209, and in ***National Insurance Company Limited v. Mahipal & Ors.***, Neutral Citation 2023:DHC:4861. The Impugned Award shall stand modified to this extent.

12. The appeal is allowed in the above terms. The pending application also stands disposed of.

13. There shall be no order as to costs.

14. The statutory amount deposited by the appellant shall be released to the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 10, 2023/rv/rp

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