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

Date of Decision:- 10.02.2023

+ **MAC.APP. 266/2021 & CM APPL. 34444/2021 (stay)**

HDFC ERGO GENERAL INSURANCE CO. LTD. Appellant

Through: Mr.Pankaj Gupta, Adv. for Ms.Suman
Bagga, Adv.

versus

BINDU PASWAN & ANR.

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal preferred by the insurer under Section 173 of the Motor Vehicles Act, 1988, seeks to assail the award dated 26.03.2021 insofar as it does not grant any recovery rights to the appellant against the respondent no.2/driver/owner of the offending vehicle, which was insured with the appellant.

2. Despite service, none appears for the respondents. In these circumstances, this Court has no other option, but to take up the matter for disposal without granting any further opportunity to the respondents.

3. Learned counsel for the appellant submits that once it was clear from the unrebutted testimony of the Record Clerk from the Sarai Kale Khan Transport Authority, South Zone, New Delhi that the respondent no.2 did not have a valid licence to drive a two wheeler vehicle, it was evident that

the terms and conditions of the insurance policy stood breached which fact the learned Tribunal failed to consider and consequently, did not grant recovery rights to the appellant. In support of his plea, he seeks to place reliance on the decision of this Court in ***Bajaj Allianz General Insurance Co. Ltd. v. Akram Hussain & Ors. [MAC.APP.306/2009]*** .

4. Having considered the submissions of the learned counsel for the appellant and perused the record, I find that Sh. Rohtash Singh, Record Clerk from Sarai Kale Khan Transport Authority, South Zone, New Delhi, who was examined as R2/W1 by the appellant, had categorically stated before the learned Tribunal that the respondent no. 2 was authorised to drive only a Light Motor Vehicle—Transport i.e., LMV-TR (Commercial Vehicle) and not a two-wheeler vehicle. In fact, this statement of the Record Clerk has been noted in paras 11 and 12 of the impugned award itself. It would, therefore, be apposite to refer to these paras of the impugned award which read as under:-

“11. Respondent no. 2 has examined one witness R2W1 Sh. Rohtash Singh, Record Clerk from Sarai Kale Khan Transport Authority, South Zone, New Delhi. He was the summoned witness. He has brought the report in regard to the driving license bearing no. DL-03-20010131199 of Sh. Jai Pal Chand S/o Sh. Mohan Chand pertaining to LMV-TR which is valid from 06.03.2019 to 07.03.2022. As per record, Jai Pal Chand is authorised to drive only LMV transport. He proved the report as Ex.R2W1/1.

12. This witness was put to the test of cross examination whereby he deposed that as per record Jai Pal Chand was authorised to drive only commercial vehicle not two wheeler. He further deposed that he has not been issued license to drive two wheeler.

5. However, I find that despite having noted the categorical stand of the transport authority that the respondent no.2, driver of the offending vehicle, did not hold a valid licence to drive a two wheeler, which he was driving at the time of the accident, the learned Tribunal rejected the appellant's plea that it was not liable to pay compensation. The findings of the learned Tribunal on this aspect, as recorded in para 20, read as under:-

*20; Now, the court has to assess as to how much compensation be awarded to the petitioners and to whom the liability to pay the compensation has to be fastened. Primary liability for paying the damages for the injury suffered by the victim in a road accident arising out of the use of Motor Vehicle is of the driver. Since, the vehicle was owned by the respondent no. 1 itself herein, therefore, the primary liability rests upon the respondent no. 1. Here, the insurance company has argued that he is not liable to pay anything; because the driver of the offending vehicle was not having the driving license to drive the two wheeler scooty. **However, that argument is not tenable. Driver was holding a valid license to drive a commercial vehicle. Therefore, a male person who is competent to drive the light motor vehicle (commercial) cannot be expected to be incompetent in driving the two wheeler. Therefore, on such a small ground, the insurance company cannot be escaped from paying the insured amount.(emphasis supplied)** It is admitted position on record that vehicle was insured with the respondent no. 3, therefore, it is the insurance company who has to pay the damages suffered to the victims in the road accident in the present case."*

6. The presumption of the learned Tribunal that a male who is competent to drive a Light Motor Vehicle (Commercial) could not be expected to be incompetent to drive a two wheeler, is in my view, wholly without any

basis. This Court fails to appreciate as to how a person who can drive a four wheeler can be automatically presumed to be competent to drive a two wheeler as well. On the other hand, the skills required for driving a two wheeler are quite different from those required for driving a four wheeler. Driving a two wheeler would require balancing of the vehicle would not at all be relevant for driving a commercial vehicle which is much larger in size. It appears that the learned Trial Court has failed to appreciate that under the Motor Vehicles Act, a Light Motor Vehicle and a two wheeler have been placed in two distinct categories. Merely because respondent no. 2 held a valid licence for a Light Motor Vehicle could not imply that he was authorised or competent to drive a two wheeler.

7. In this regard reference may also be made to the decision of this Court in ***Bajaj Allianz General Insurance Co. Ltd.(supra)*** wherein while dealing with a similar issue, the Court held that it could not be assumed that every person who was competent to drive Light Motor Vehicle would be skilled in driving a two wheeler as well. The relevant findings of the Court as contained in para 19 of the decision read as under:-

“19. Cumulatively read the aforesaid provisions of law make it incumbent upon a person driving a motor vehicle in any public place to hold a valid and effective driving licence issued to him by the Competent Authority under Chapter II, authorizing him to drive the motor vehicle of the class specified in the licence. It is also clear that a light motor vehicle has been classified as a separate and distinct class of vehicle than a motorcycle, which is a two wheeled motor vehicle as opposed to a light motor vehicle which means a transport vehicle or omni bus the gross weight of either of which, or motor car or tractor or road roller, the unladen weight of any of which, does not exceed 7,500 kilograms. While Clause 21 defines a light motor vehicle, the definition

of a motorcycle is as contained in Clause 27. Thus, the two categories of vehicles must be held to be separate and distinct. Even otherwise, it stands to reason that the expertise which is required to drive a motorcycle is quite different from the know-how required by a person for driving a light motor vehicle, that is to say, it cannot be assumed that every person who is competent to drive LMV, will be skilled in driving a two-wheeler as well.”

8. In the light of the aforesaid, it is evident that the offending vehicle, a motor cycle was being driven by a person who did not have a driving licence and therefore, it was a clear case where there was a breach of the terms and conditions of the insurance policy. Consequently, the finding of the learned Tribunal that the appellant was liable to pay the compensation is unsustainable and is set aside. The appeal is, accordingly, allowed by modifying the impugned award to the extent it does not grant any recovery rights in favour of the appellant by directing that the appellant would be entitled to recover the awarded amount from respondent no. 2 in accordance with law.

9. The appeal stands disposed of in the aforesaid terms.

REKHA PALLI, J

FEBRUARY 10, 2023
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