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

Date of decision: 24th July, 2023

+ MAC.APP. 380/2022 & CM APPL. 51294/2022
THE ORIENTAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr.J.P.N.Shahi, Adv.

versus

SH. NANHAKUOO AND ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal has been filed challenging the Award dated 29.04.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal'), in claim petition bearing New No.449963-2016/UNIQUE ID No.: DLNW01-000653-2012.

2. The limited challenge of the appellant to the Impugned Award is that the learned Tribunal has erred in not granting recovery rights to the appellant herein against the owner/driver of the offending vehicle, being Tempo bearing registration No.DL1M-2029 (hereinafter referred to as the 'offending vehicle').

Signature Not Verified The learned counsel for the appellant, drawing reference to the

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statement of R3W2- Mr.Vivek Raj, LDC, DTO Gaya, Bihar (hereinafter referred to as 'R3W2') submits that the said witness deposed that the driver of the offending vehicle was holding a driving license meant for Light Motor Vehicle (in short 'LMV') which was not valid for Heavy Transport Vehicle. He submits that, therefore, the driver of the offending vehicle did not have a valid license to drive the offending vehicle at the time of the accident, and in terms of Section 149 of the Motor Vehicle Act, 1988, as it stood on the date of the accident (hereinafter referred to as the 'Act'), the appellant should have been granted recovery rights against the driver/owner of the offending vehicle.

4. I have considered the submission made by the learned counsel for the appellant, and I am unable to agree with the same.

5. R3W2, in his statement, stated that he could not say if the driving license, on its transfer to DTO Ranchi, was changed to allow the driver to drive a heavy vehicle with effect from 11.04.2010. On the other hand, Mr.Sanjeew Kumar, DTO Ranchi, Jharkhand, examined as R3W1, in his statement has stated that the driving license of the driver of the offending vehicle was valid for LMV upto 17.09.2011 and for the Heavy Goods Vehicle (in short 'HGV') from 11.06.2010, which was valid for three years. He stated that the driver was authorised to drive a Medium Goods Vehicle on 14.01.2012, the date of the accident.

6. Relying upon the testimony of R3W1, the learned Tribunal on the aspect of apportionment of liability has observed as under:

"19. Liability

19.1 In the present case, though, it is the



defence of R3 that R1 was driving a medium goods vehicle despite having a driving licence whereby he was authorised only to drive a Light Motor Vehicle(LMV). However, it had been admitted by the respondent No.3 that the offending vehicle was insured with it vide policy bearing no.271300/31/2012/1041 for a period from 03.05.2011 to 02.05.2012 in the name of R2, and therefore, the insurance policy of the offending vehicle was live and valid as on the date of occurrence of the case accident, that is, 14.01.2012. It had been, thus, claimed in defence of R3 that the driving licence of R1 did not cover the class of vehicle which was being driven by R1, and therefore, R1 had committed breach of terms and conditions of the insurance policy as a consequence of which R3 was not liable to pay any compensation to the victim. In this context, a perusal of the Court record further reveals that R3 had summoned three witnesses to prove that R1 was driving a medium goods vehicle despite having a licence authorising him to drive only a light motor vehicle and out of the said three witnesses, R3W1 Sh. Sanjeev Kumar had produced the record pertaining to the driving licence of R1 renewed from the office of DTO, Ranchi upto 17.09.2014. The said driving licence further authorised R1 to drive a heavy goods vehicles with effect from 11.06.2010 and the said licence was valid upto 17.09.2014. Therefore, the licence of R1 was valid for driving HGV as on the occurrence of the case accident. The endorsement regarding authorisation of R1 to drive a heavy goods vehicle as on the date of occurrence of the case accident has been duly proved through the testimony of R3W1 and thus, there is no ground to arrive at a finding that R1 was driving a medium goods vehicle in violation of the authority conferred upon him by virtue of his driving licence or was in any manner exceeding the said authority. Further, there is no ground to arrive at a finding that R1 was not having in his possession a valid licence



authorising him to drive the offending vehicle, that is, a medium goods vehicle as on the date of occurrence of the case accident or had committed breach of terms and conditions of the insurance policy of the offending vehicle in any manner. Accordingly, the defence of R3/insurance company is not sustainable and the liability to pay the compensation amount is hereby fixed upon R3/insurance company. In facts and circumstances of the case, R3/Insurance co. is directed to pay the compensation amount to the petitioner.”

7. I find no infirmity in the above view taken by the learned Tribunal. It had come on record that as on the date of the accident, the driver of the offending vehicle was authorised to drive the offending vehicle, having a valid driving license for the same. Therefore, no ground for exemption from liability under Section 149 of the Act was made out by the appellant.

8. Accordingly, I find no merit in the present appeal. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

JULY 24, 2023/Arya/AS

Click here to check corrigendum, if any