$~10 **(08.09.2023)**

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

Date of decision: <u>11.09.2023</u>

\+ **MAC.APP. 659/2018**

IFFCO TOKIO GENERAL INSURANCE CO LTD...Appellant
Through: Mr.Brijesh Bagga, Adv.

versus

ANJU & ORS ..... Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (*ORAL*)</u>

1. As 08.09.2023 was declared a holiday, the appeal is taken up for hearing today.

2. This appeal has been filed challenging the Award dated 02.05.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01, North District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.4673/2016 titled as ***Ms. Anju & Ors. v. Mr. Nitesh Kumar Pandey & Ors***..

3. The limited challenge of the appellant to the Impugned Award is against the refusal of the learned Tribunal to grant a right in favour of the appellant herein for recovering the compensation that is to be paid to the respondent nos.1 to 7 herein (claimants) under the Impugned Award from the respondent nos.8 and 9 herein, that is, the owner and the driver of the offending vehicle, that is, Ford Endeavour Jeep bearing no.DL-3FBW-0017.

4. The learned counsel for the appellant submits that the police

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had seized a Driving Licence bearing no.34848/TV/T/2012 of the driver/respondent no.8 herein, on 03.07.2015. On the summons being issued, a report was received, on an affidavit of one Mr.Tsuknungmeren, District Transport Officer, Tuensang, Nagaland, duly attested by Mr. B.C. Jain, Notary Public, Government of Nagaland, to the effect that no driving licence with the above number had been issued by the said office. He submits that, therefore, the driving licence produced by the respondent no.8 was fake.

5. He submits that the learned Tribunal, however, failed to act on this report holding that the appellant herein had not examined any witness from Nagaland to prove the same. He submits that the learned Tribunal has, however, ignored its own earlier order dated 07.07.2017, wherein the learned Tribunal had held that the report received from the District Transport Officer, Tuensang, Nagaland shall be considered at the time of final arguments.

6. The learned counsel for the appellant further submits that the Government of Nagaland had issued a 'Public Information' bearing reference no.TC-23/MV/2007(PT-I) dated Kohima, the 1st Aug. 2014, stating that, after 01.12.2014, any Driving Licence other than a Smart Card shall be considered as cancelled. He submits that as the accident had taken place on 02.06.2015, in terms of the Public Information, the Driving Licence, if any, issued in favour of the respondent no.8 shall be treated as cancelled and invalid.

7. He submits that, therefore, the appellant should have been granted a right to recover the compensation paid to the respondent nos.1 to 7 herein in terms of the Impugned Award, from the respondent nos.8 and 9 herein.

8. I have considered the submissions made by the learned counsel

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for the appellant.

9. In the present case, the above submissions need not detain me any further, inasmuch as the respondent no.9, the owner of the offending vehicle, in his deposition had stated that he had seen the Driving Licence of the respondent no.8 and had also taken his driving test before employing him as a driver. He had further stated that the respondent no.8 herein was found to be driving the vehicle perfectly when employed. Though the appellant has cross-examined him on this aspect, the above testimony could not be shaken in the said cross-examination.

10. In ***United India Insurance Co. Ltd. v. Lehru & Ors.,*** (2003) 3 SCC 338, the Supreme Court, considering Section 149 of the Motor Vehicles Act, 1988, as it then stood, has held as under:

> *"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the*

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> *innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia (1987) 2 SCC 654, Sohan Lal Passi (1996) 5 SCC 21 and Kamla (2001) 4 SCC 342 cases. We are in full agreement with the views expressed therein and see no reason to take a different view."*

11. In the present case also, the owner of the offending vehicle, that is, the respondent no.9 herein, had stated that he had not only satisfied himself that the respondent no.8 was in possession of a Driving Licence, but had also taken his driving test before employing him. He was not supposed to make an inquiry from the RTO with respect to the validity of the said Driving Licence. Merely because the Public Information invalidated the driving licences not issued in form of Smart Card, no further obligation could be fastened on the owner where otherwise the Driving Licence appears to be genuine and valid on the face of it. It must be noticed that the respondent no. 9 was not a resident of the State of Nagaland. Though ignorance of law cannot be an excuse, however, in the facts of the present case, liability to reimburse the compensation paid by the appellant to the respondent nos. 1 to 7, cannot be fastened on the respondent no. 9 only on this account.

12. In view of the above, I find no merit in the present appeal. The same is accordingly dismissed.

13. There shall be no orders as to costs.

14. The statutory amount deposited by the appellant be released to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

SEPTEMBER 11, 2023/AS

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