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

Date of decision:12.07.2023

\+ MAC.APP. 508/2017 & CM APPL. 20933/2017

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD. ..... Appellant

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

versus

KUSUMA DEVI & ORS. ..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Impugned Award dated 09.03.2017 passed by the learned Motor Accidents Claims Tribunal, Shahadara, Karkardooma Courts (hereinafter referred to the 'Tribunal') in MAC Case No.21/15, titled ***Kusuma Devi v. Shri Devi***.

2. The limited challenge of the appellant to the Impugned Award is that in spite of the objection of the appellant that the offending vehicle was being driven by Sh.Ved Prakash without a valid driving licence and the respondent no.3 herein who is the owner of the vehicle did not dispute the above assertion and, in fact, did not even file a written statement, the appellant has not been granted a right to recover the compensation that has been paid under the Impugned Award to the claimant.

3. The learned counsel for the appellant submits that in terms of

the Insurance Policy, it was a condition of liability that the vehicle should be driven by a person holding a valid driving licence at the time of accident. The onus of proving the same was on the respondent no.3 herein, as the appellant had not only raised this issue before the learned Tribunal, but had also issued a notice calling upon the respondent no.3 to produce the driving licence of the driver. The respondent no.3 neither challenged the above assertion before the learned Tribunal nor replied to the notice issued by the appellant herein.

4. Placing reliance on the judgment of the Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh & Ors***., (2004) 3 SCC 297, the learned counsel for the appellant submits that the appellant, in terms of its contract with the respondent no.3, was entitled to claim recovery of the compensation paid to the claimant under the Impugned Award, and such a right should have been reserved by the Impugned Award.

5. In spite of service of notice of this appeal, none has appeared for the respondent no.3.

6. The learned Tribunal in the Impugned Award on the above issue, has observed as under:

> "**LIABILITY**
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> *21. The respondent no. 3 has examined one witness. R3W1 Jitender Dabhai. Assistant Manager of the insurance company has filed his affidavit Ex.R3W1/A wherein he stated that offending vehicle is insured vide insurance policy Ex.R3W1/1. The deceased driver was not holding valid driving licence at the time of accident. A notice u/o 12 rule 8 Ex.R3Wl/2*

> *was sent by post to respondent no. 2 to produce documents of the vehicle and driving licence of deceased driver. The postal receipts are Ex.R3W1/3. The deceased Ved Prakash was unauthorized passenger in the vehicle. The insurance company is not liable to pay compensation to the petitioner.*
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> *22. Heard and perused the record. Deceased Ved Prakash was driving the offending vehicle. The deceased has expired in the accident. There is nothing in the detailed accident report Ex.PW-1/3 that deceased Ved Prakash was not having any driving licence. The insurance company could have examined the owner of the vehicle to show that deceased Ved Prakash was not holding any driving licence. No evidence has come on record that deceased Ved Prakash was driving the vehicle without any driving licence. The mere assertion on the part of insurance company is not enough to prove this fact."*

7. From the above observation of the learned Tribunal, it is apparent that the learned Tribunal has considered the submission of the appellant of the driver of the offending vehicle not being in possession of a driving valid licence, only from the prism of its liability to the Claimant. The learned Tribunal has not considered as to whether it was for the insured/owner, respondent no.3 herein, to prove that the driver of the offending vehicle was having a valid license so as to avoid his liability to reimburse the appellant of the compensation paid by it to the Claimant.

8. As the respondent no.3 did not produce the driving licence before the learned Tribunal and has chosen not to enter appearance before the learned Tribunal or before this Court, relying upon the judgment in ***IFFCO Tokio General Insurance Co. Ltd. v. Shama***

Parveen & Ors., Neutral Citation No.2016:DHC:4290, it is held that the appellant shall have a right to recover from the respondent no.3 the compensation that it has paid to the claimant in terms of the Impugned Award, by initiating appropriate proceedings in that regard in accordance with the law.

9. Statutory deposit, if made, by the appellant shall be refunded to the appellant along with interest accrued thereon.

10. The appeal is allowed in the above terms.There is no order as to cost.

NAVIN CHAWLA, J

JULY 12, 2023
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Click here to check corrigendum, if any