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

\+ MAC.APP. 204/2021, CM APPL. 20437/2021 (stay)

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD......Appellant

Through: Ms. Suman Bagga, Advocate.

versus

JAGDISH MANDAL & ORS. .....Respondents

Through: Counsel for R5 (appearance not given)

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>O R D E R</u>

% **04.10.2024**

<u>CM APPL. 20438/2021 (Exemption)</u>

1. Exemption allowed subject to all just exceptions.

2. The application stands disposed of.

<u>MAC.APP. 204/2021</u>

3. The Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of the appellant/Insurance Company against the Award dated 18.03.2021, to the extent that despite returning a finding in the impugned Award that the evidence had been led by the Insurance Company, to prove that the driving license of the driver, Mr. Yogesh, was fake by examining a witness from the Transport Authority.

4. While so observing, reference has also been made to '*United India Insurance Co. Ltd. vs. Gyan Chand'*, 1997 A CJ 1065 (SC) and *'National Insurance Co. vs. Swaran Singh',* (2004) 3 SCC 297 wherein it has been

held that the adverse inference can be drawn against the driver and owner, if they fail to prove their case or do not step into the witness box.

5. In the present case, the respondent Nos. 1 and 2 i.e. the driver and the owner, did not contest the case to avoid their liability and did not examine themselves and therefore, adverse inference is liable to be drawn against them. Having so held, the learned Tribunal has proceeded to exonerate the owner from the right of the Insurance Company, to seek recovery rights. For this conclusion, the Tribunal referred to The learned Tribunal referred to various Judgments in the Case of *'United India Insurance Co. Ltd. vs. Lehru & Ors.', 'Pepsu RTC vs. National Insurance Co.'* and *'Nirmala Kothari vs. United India Insurance Co. Ltd.'* wherein it had been held that even where the insurer is able to prove breach on the part of the insured concerning the Policy condition regarding holding of a valid licence by the driver or any disqualification to drive during the relevant period, the Insurer would not be allowed to avoid its liability towards insured unless the breach on the condition of driving licence is so fundamental as is found to contribute to the cause of the accident.

6. Learned counsel for the respondent No. 5, M/s Deneb and Pollux Tour and Travels/owner has submitted that there was no breach of Insurance Policy and therefore, Insurance Company is not entitled to any recovery rights.

7. **Submissions heard.**

8. As has been observed categorically in the Cases of *United India Insurance Co. Ltd. (*supra) and *National Insurance Co.* (supra), the onus was on the driver/owner, to explain whether they had a valid driving license. Once the Insurance Company had led evidence to prove that the driving

license was fake, such evidence could not have been ignored by the learned Tribunal to deny the recovery rights to the Insurance Company. However, learned counsel for the respondent No. 5 seeks one opportunity to prove that there was no breach of any of the terms of Policy.

9. In the light of the submissions, the finding in regard to the denial of recovery rights to the Insurance Company, is hereby set aside and one opportunity is given to the respondent No. 5/owner, to adduce evidence in respect of the Driving License of the driver.

10. It is hereby clarified that in case the learned Tribunal gives any finding in favour of the respondent No. 5, the interest liability for the period since the Appeal has been filed and the case is decided afresh by the learned Tribunal, shall be borne by the respondent No. 5.

11. The parties are directed to appear before the learned Tribunal on 14.10.2024. Only two opportunities shall be granted to the respondent No. 5, to conclude its evidence and under no circumstances, would further opportunity be granted by the learned Tribunal, to the respondent No. 5.

12. With these observations, the Appeal is hereby disposed of. The pending Applications also stand disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 4, 2024/RS