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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 01st May, 2024**+ **MAC.APP. 884/2018****THE NEW INDIA ASSURANCE CO LTD Appellant****Through: Ms. Shuchi Singh, Adv.****versus****NEELAM & ORS****..... Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.05.2018 passed by MACT, Rohini, MACT-1, (North), New Delhi.

2. No one has appeared for the respondents viz. the claimants/respondent No.1 to 5, as well as, the driver and registered owner of the offending vehicle.

3. Having heard the learned counsel for the appellant/insurance company who is present through VC, and on perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant insurance company under Section 173 of the Motor Vehicles Act, 1988.

4. The main grievance of the appellant/insurance company is that despite there being evidence on the record to the fact that the driving licence of respondent No.6 was forged and fabricated and it had not been issued by the RTO¹, Kanpur and that the learned Tribunal

¹ Regional Transport Authority



committed a grave irregularity in not granting recovery rights to the appellant/insurance company against the driver and registered owner of the offending vehicle.

5. First things first, there is no challenge by the appellant/insurance company to the finding rendered by the learned Tribunal holding that it was the driver of the offending vehicle i.e. respondent No.6 who was held guilty of driving the tanker bearing registration No.NL-02D-6760 in a rash and negligent manner and thereby, causing an accident resulting in the death of the deceased Ashish. The learned Tribunal awarded a total compensation of Rs.21,47,650/- with interest @ 9% per annum from the date of filing of the petition i.e. 10.05.2013 till realisation. There is no challenge to the quantum of compensation awarded by learned Tribunal either.

6. As regards the issue of imposing financial liability to pay compensation upon the insurance company vis-a-vis the driver and registered owner of the offending vehicle is concerned, it would be apposite to refer to the findings recorded by the learned Tribunal which read as under :

“16.Now coming to the aspect as to who is liable to pay the compensation. It has already been held that the deceased had expired due to rash and negligent driving of respondent no.1. He is primarily liable to make payment. However, the petitioners have made the respondent no.3 (insurance company) as one of the party seeking direction to respondent no.3 that it be directed to pay the compensation to the petitioners. It is not in dispute that the offending vehicle was insured with the respondent no.3 on the date of accident but it is contended by counsel for respondent no.3

that the alleged offending vehicle was being driven by respondent no.1 without holding proper and valid driving licence at the time of accident and the respondent no.2 was having knowledge of this fact, thus there is a clear breach of terms and conditions of the policy.

17.Respondent no.3 has examined R3W1 Mr. N. K. Saxena who deposed that the insured owner contrary to the terms of the policy and provisions of Motor Vehicles Act has handed over the vehicle to a person who was not



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holding valid driving licence as per report of RTO Ex.R3W1/5 wherein it is stated that driving licence no.H-1582 was not issued by their office and no document in respect of the said driving licence is available in their office.

19. The said order is fully applicable to the present case as the insurance company has raised plea that the licence of the driver is fake but it has not examined any witness from RTO, Kanpur to prove the same. Further to prove this fact no positive evidence has been led by respondent no.3 to prove these apprehensions/contentions. Pleadings however strong it may be cannot take the place of the proof. Hence in view of the above, the conclusion of ld.counsel for respondent no.3 is not tenable. In view of the above and since the respondent no.3 has no statutory defence, respondent no.3 liable to pay compensation to the petitioners.

7. A careful perusal of the aforesaid reasoning rendered by the learned Tribunal would show that there was already a report from the RTO Ex.R3W1/5 to the effect that the driving licence of respondent No.6 was not genuine. However, the appellant/insurance company has not led any cogent and reliable evidence, so as to suggest respondent No.7 i.e. the registered owner of the tanker was aware that such driving licence was not genuine. There is no evidence led on the record so as to raise an inference that respondent No.7/registered owner intentionally or deliberately handed over the control of the offending tanker to respondent No.6 despite knowing that such driving licence was not genuine. Needless to state that the burden of proving such fundamental facts is upon the shoulders of the insurance company and that neither the driver nor the registered owner was summoned so as to prove their averment. Reference in this connection can be made to the decision in **United India Insurance Co. Ltd. v. Lehu**², wherein it was 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,

² (2003) 3 SCC 338



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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 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 : 1996 SCC (Cri) 871] and *Kamla* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

8. In view of the foregoing discussion, the present appeal is devoid of any merits. It was submitted by the learned counsel for the appellant that the entire amount of compensation with accrued interest has already been paid to the respondents/claimants No.1 to 5. Nothing further survives in the present appeal. The appeal is dismissed accordingly.

9. The pending application, if any, also stands disposed of.

DHARMESH SHARMA, J.

MAY 01, 2024
VLD

Signature Not Verified

Digitally Signed By: PRANJAN KUMAR VATS
Signing Date: 05/05/2024 17:55:48

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