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

\+ MAC.APP. 962/2018 & CM APPL. 45222/2018

ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. Pradeep Gaur and Amit Gaur, Advocates.

versus

BIJENDER SINGH & ORS .....Respondents

Through: Mr. Navneet Goyal, Adv. for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

% **03.10.2024**

1. Appeal under Section 173 of the Motor Vehicles Act has been filed by the Insurance Company against the judgment dated 16.07.2018 vide which the recovery rights against respondent driver, were denied.

2. The learned counsel on behalf of the Insurance company has challenged the impugned Order dated 16.07.2018 on the ground that the respondent/owner had failed to contest the petition when it was filed initially. Vide judgment dated 25.03.2010 the recovery rights were granted to the Insurance Company against the owner.

3. Thereafter, an Application under Order 9 Rule 13 CPC was filed by the respondent/Judgment Debtor on 18.10.2016 and the Application was allowed vide order dated 11.04.2017.

4. It is claimed that the Application under Order 9 Rule 13 was wrongly allowed by the learned Presiding Officer. Thereafter, when

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the matter was being argued realizing that the Written Statement of the respondent was not on record, an Application under Order 8 Rule 1 was filed for condonation of delay in filing the Written Statement, which was allowed on 17.03.2018 and the Written Statement was taken on record. The arguments were heard and thereafter, it was held that the Insurance Company is not entitled to recovery rights against the owner.

5. The impugned Order has been challenged on the ground that in the Execution Petition which got filed against the judgment dated 25.03.2010, respondent appeared and even paid Rs.5 lakhs without protest and the matter was thereafter, adjourned for further payments. However, while the Execution proceedings were pending, the Application under Order 9 Rule 13 CPC was filed which has been allowed on erroneous grounds.

6. The learned Tribunal has failed to appreciate that there was no evidentiary value to the evidence led in the proceedings, as it was recorded prior to his filing of Written Statement, so no credence can thus, be given to the evidence led on behalf of the owner. Furthermore, the entire story has been concocted by the owner that he had conducted the driving test of the driver before employing him, but there is no cogent and reliable evidence led in this regard. The rights had been rightly granted to the Insurance Company against the owner in the judgment dated 25.03.2010 since the driver was not holding a valid and effective driving license and the same was found to be vague.

7. The learned Tribunal has failed to appreciate that in the first

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round of litigation, the owner was proceeded *ex-parte* on 12.05.2005 and the Award was made on 25.03.2010 whereby the recovery rights were rightly given to the Insurance Company. The respondent is liable to refund the compensation amount to the Insurance Company and thus the judgment dated 16.07.2018 is liable to be set aside.

8. **Learned counsel on behalf of the respondent** has not denied or disputed the factual conspectus of the record as has been narrated above, but has submitted that the owner has proved through cogent evidence that he had acted like a normal reasonable prudent man and taken steps to ensure before employing the driver, that he had a valid license.

9. **Submissions Heard.**

10. It is not in dispute that the offending vehicle was duly insured with the Insurance Company/Appellant and that in the first instance Insurance Company was liable to pay the compensation. The only contention in the present Appeal is whether the owner/respondent was absolved of its liability to refund the compensation amount to the Insurance Company since it had taken all precautions before employing the driver to ensure that he had a valid driving license.

11. The learned Tribunal has referred to the Judgments in ***United India Insurance Company Ltd. Vs. Lehru & Ors, (2003) 3SCC 338; National Insurance Company Limited Vs. Swaran Singh & Ors (2004) 3SCC 297 and National Insurance Company Ltd. Vs. Geeta Bhat & Ors, AIR 2003 SC 1837 and also of the Hon'ble Delhi High Court in cases National Insurance Co. Ltd. Vs. Ramesh Kumari & Ors, MAC.Appeal No.75/2011, decided on 07.12.2015; Oriental***

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Insurance Co. Ltd. Vs. Shakuntala Devi & ors., MAC Appeal No. 461/2008, decided on 04.08.2015 and The New India Assurance Co. Ltd. Vs. Avinash Arya & Ors., MACP Appeal No, 188/2013, decided on 27.08.2014 wherein it has been consistently held that the owner cannot be expected to check the records of driving license from the concerned Transport Authority, to satisfy himself that the driving license is genuine. If the owner has in his prudence, taken the test of the driver to judge his competence and has also seen the driving license which apparently looks authentic, he is not expected to do anything further. In these circumstances, the liability to refund the compensation amount on the Insurance Company cannot be saddled.

12. The respondent in his testimony before the Tribunal, has deposed that he had taken the driving test of R-1 the driver while employing him as a driver for the offending bus and had also kept the copy of the driving license of the driver, which is Exhibit R2W1/DB.

13. The Learned Tribunal observed that the license appeared to be genuine and this fact had even been admitted by R3W3 Sh.Om Prakash, witness from the Transport Authority. It was thus, concluded that even if subsequently the driving license of the driver is found to be fake, it does not constitute a valid defence for an Insurance Company to avoid their liability under the terms and conditions of the Insurance Policy of the vehicle and the provisions contained under Section 149(2)(a)(ii) of the Motor Vehicles Act.

14. It was thus, concluded that the Insurance Company had failed to prove the terms and conditions of Insurance Policy were violated by the owner and thus, denied the recovery rights to the Insurance

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Company from the owner.

15. From the above discussion, it is evident that the learned Tribunal had appreciated the evidence led by Respondent No.2 cogently in accordance with the settled proposition of law. There is no infirmity in the Order of the learned Tribunal, and the Recovery rights from the owner have been rightly denied to the Insurance Company.

16. The Appeal is hereby dismissed.

17. The statutory amount of Rs.25,000/- deposited by the Insurance Company be refunded in accordance with law.

18. The Respondent is at liberty to seek recovery of Rs.5 lakhs paid by him during the Execution proceedings in accordance with law.

NEENA BANSAL KRISHNA, J

OCTOBER 3, 2024
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