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

% ***Date of decision:25th November, 2024***

\+ **MAC.APP. 1109/2018 & CM APPL. 52230/2018**

THE ORIENTAL INSURANCE CO LTD .....Appellant
Through: Mr. Ravi Sabharwal, Advocate.

versus

ANURAG & ANR .....Respondent
Through: Ms. Jyoti, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

1. Appeal under Section 173 of *Motor Vehicle Act, 1988* has been filed by the Insurance Company to set aside the Award dated 18.07.2018 *vide* which the learned Tribunal has exonerated the owner from the *Recovery Rights* granted in favour of the Insurance Company.

2. *Briefly stated,* four Claim Petitions were filed in respect of the road accident in respect of which FIR No.351/2007, P.S. Hazrat Nizamuddin was registered. The Learned Tribunal passed an *ex parte common* Award dated 15.03.2012 in favour of the Claimants awarding Rs. 1,86,200/, (Petition No. 11/10) Rs.1,47,000/- (Petition No. 12/10), Rs. 58,700/- (Petition No. 13/10) and Rs. 1,10,600 (Petition No. 10/10) along with 9% interest per annum. Further, the Tribunal granted Appellant/Insurance Company with *Recovery Rights* as the Respondent No. 1/Owner did not appear before the Tribunal and the driver's license of Respondent No. 2/Driver was found to be fake.

3. However, the owner Anurag filed an Application under Order 9 Rule

13 of *The Code of Civil Procedure, 1908* ('CPC' *hereinafter*) for setting aside the *ex parte* Award dated 15.03.2012 which was allowed *vide* Order dated 03.01.2017. The Respondent No.1 Anurag then led his evidence as A2W1.

4. It was considered that Respondent No. 1/Owner had filed a Written Statement to the Claim Petition but the Claim petition was subsequently amended by the Claimants. The Ld. Tribunal observed that fresh notice was supposed to be issued to the parties after amendment of the petition. Further, it was observed that when the amended petition was filed the Respondent No. 1 was entitled to an opportunity to Reply which was not given to him.

5. Further, in the light of evidence led by the Owner, a fresh Award was made on 18.07.2018 *vide* which the Recovery Rights granted to the Insurance Company, were withdrawn.

6. ***Aggrieved by the said Award,*** the Appeal has been filed by the Insurance Company to challenge the Award on the ground that the Award has been passed mechanically without appreciation of facts and the evidence. Respondent No.1, Anurag had never disclosed the facts in his Written Statement that he had seen the driving license of the driver of the offending vehicle or had checked his driving skills. The learned Tribunal further failed to appreciate that the driver was not having a valid and effective driving license on the date of accident as was considered by the learned Tribunal. It was also observed by the learned Tribunal that notice under Order 12 Rule 8 CPC was sent to the driver, but he failed to respond to the same. The learned Tribunal, therefore, fell in error in recalling the Recovery Rights and the impugned Award is liable to be set aside.

7. In support of his assertions, reliance has been placed on <u>*Sheela Rani*</u>

vs. National Insurance Co. Ltd, MAC.APP.701/2012 and *National Insurance Co. Ltd vs. Beera Devi @ Meera Devi & Ors, MAC.APP.388/2014* decided on 01.03.2016 wherein the Coordinate Bench of this Court had held that where such plea are projected by the Order subsequent to the Notice under Order 12 Rule 8 of the CPC it amounts to an afterthought and cannot be considered.

8. *Learned counsel on behalf of the Driver-owner* however, contended that the impugned Order has been made in accordance with law and does not merit any interference.

9. **Submissions Heard**.

10. The Respondent No. 2/Driver driving a Tavera car owned by Respondent No. 1, Sh. Anurag bearing no. HR. 55 DT 0851 got into an accident while driving in a rash and negligent manner. Due to sudden and forceful impact, the claimants sustained multiple injuries. The vehicle was duly insured with the Insurance Company/Appellant.

11. The *sole grievance* of the Appellate/Insurance Company is that the Ld. Tribunal has annulled the recovery rights without appreciating that the Driver in question didn't have a valid and effective driver's license on the date of accident.

12. Admittedly, the Ld. Tribunal *vide* Order dated 03.01.2017 set aside the judgement and gave an opportunity to Respondent No. 1 to lead his evidence to prove that he did not commit any wilful breach of the terms and conditions of the Insurance policy.

13. The Respondent No.1/Anurag led his evidence as A2W1 along with furnishing his affidavit wherein he deposed that at the time of hiring the Respondent No. 2/Driver had shown him his Driver's License which seemed

genuine in his estimation. During his Cross-examination, the Respondent No. 1/Driver reiterated the same and stated that he himself took driving test of the Driver as well.

14. *Firstly*, on the *aspect of validity of Driver's License*, the Ld. Tribunal observed that in the Affidavit of Evidence of Respondent No. 1/Driver has stated that he even inquired about the competence of the driver from the previous employer, Shri Anil Kumar who operated in transport business in Gurgaon. It was further observed that there was nothing in the cross examination to doubt the testimony of the Respondent No. 2./Driver.

15. The Apex Court in *United India Insurance Co. Ltd. v. Lehru & Ors.* (2003) ACC 611(SC) held that where the Owner has seen the driving license of the driver and satisfied himself about the driving skills of the driver and genuineness of his driving license, the Insurance Company would not then be absolved of liability

16. The Ld. Tribunal rightly appreciated the evidence of the Owner in the light of the case of *UIIC Ltd. v. Lehru & Ors*.(Supra) and concluded that in the present case, the Respondent No. 1/Owner acted with due diligence in verifying the Driving skills of the driver and cannot be held responsible if the Driving licence is subsequently, found to be fake.

17. The Appellant has placed reliance on *Sheela Rani* (Supra) wherein multiple accidents were committed by the same driver and *Beera Devi @ Meera Devi* (Supra) wherein the key issue pertained to the commercial use of the offending vehicle in contravention of the Insurance Policy, but they do not aid the case of the Appellant as it is not applicable to the facts and circumstances of the present case.

18. In view of the aforesaid discussion, there is no interference needed in

the well-reasoned order of the Tribunal. Appeal is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 25, 2024
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