



2025:DHC:7988



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

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Date of Decision: 03.09.2025

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MAC.APP. 758/2018 & CM Appls. 34559/2019, 61255/2024

NEW INDIA ASSURANCE CO LTD

.....Appellant

Through: Mr. Ravinder Singh, Ms. Raveesha
Gupta and Mr. Ritvik Bhardwaj,
Advts.

versus

RATAN HALDAR & ORS

.....Respondents

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 impugning the award dated 16.07.2018 passed by the learned Presiding Officer, MACT, East District, Karkardooma Courts, Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award, the compensation amount in the sum of Rs. 13,67,000/- along with interest at the rate of 9% per annum has been awarded.

2. None appears for Respondent No. 1/Claimant. By order dated 22.10.2019, this Court had passed an order directing that that the Appellant has no *lis* with either the Claimants or the amounts awarded to them. Thus, the challenge in this Appeal is limited to an examination as to whether the Impugned Award goes beyond of remand/Earlier Judgment.

3. Briefly the facts in the present case are that on 28.02.2010, at about 8:30 a.m., the Respondent No.1/Claimant, Mr. Ratan Haldar, was pulling his rickshaw with two passengers towards Ganesh Nagar when, near Mother



Dairy Crossing, Ganesh Nagar, an RTV bus bearing No. DL IV A 2947, being driven rashly and at high speed by Pankaj Kumar, came from behind and knocked down the rickshaw. The bus overturned the rickshaw, as a result of which the Respondent No.1/Claimant was crushed under its weight and sustained grievous injuries. He was thereafter rushed to LBS Hospital for medical treatment.

4. Learned Counsel for the Appellant submits that the challenge in the present Appeal is limited. She submits that previously an award dated 19.02.2016 [hereinafter referred to as “Original Award”] in Suit. No. 432/2016 captioned ***Sh. Ratan Haldar v. Hirdesh & Ors.*** was passed by Presiding Officer, MACT, East District, Karkardooma Courts, Delhi whereby compensation amount in the sum of Rs. 13,41,712/- along with interest at the rate of 12% per annum was awarded to the Respondent No.1/Claimant.

5. The Original Award was challenged before this Court by the Appellant by MAC. APP. 246/2016 captioned ***New India Assurance Company v. Ratan Haldar & Ors.***

5.1 By a judgment dated 04.07.2017 passed by this Court in MAC. APP. 246/2016 [hereinafter referred to as “Earlier Judgment”], the matter was remanded to the learned Tribunal to prove the extent of disability and its effect on the capacity by Respondent No. 1/ Claimant to earn his livelihood. The remit of the Earlier Judgment was limited to the grant of opportunity to the parties for further evidence on the aspect of disability.

6. However, it is contended that once the matter was remanded back, the learned Tribunal adjudicated on the aspect of liability and the recovery rights which had previously been granted by the Original Award were



revoked.

7. The principal grievance of the Appellant thus, is that even though there was no challenge to the recovery rights by either party and neither was the remit of the Earlier Judgment with respect thereof, the recovery rights granted earlier by the Original Award have not been granted in the Impugned Award.

8. The record reflects that the remit of the examination as was directed by this Court was indeed limited. The Original Award was set aside by a challenge by the Respondent No. 1/Claimant to afford an opportunity to him for further evidence and “*only on the above aspect*”. The Appellant was also given an opportunity to lead evidence in rebuttal and the learned Tribunal was directed to reconsider the question of compensation in that behalf. At this stage, it is apposite to set out the relevant extract of the Earlier Judgment below:

“12. Having regard to the above fact-situation, it would be proper that the claimant is given one more opportunity to prove the extent of disability and its effect on his capacity to earn his livelihood. Thus, the impugned judgment is set aside, the matter is remitted to the Tribunal for affording additional opportunity to the claimant for further evidence only on the above aspect. Needless to add, the insurance company will be entitled to lead evidence in rebuttal, if any. After such opportunity has been afforded, the Tribunal shall re-consider the question of compensation including respecting the areas concerning which the insurer and the claimant have raised grievances before this Court. While taking fresh decision, the Tribunal will not feel bound by the decision earlier taken by it on any of the heads of damages - pecuniary or non-pecuniary. It must however, bear in mind the relevant law on the subject.”

[Emphasis supplied]

9. By the Original Award, the learned Tribunal had granted the Insurance Company recovery rights against Respondent Nos. 2 and 3 in view of the fact that these Respondents fail to produce a driving licence during the proceedings. The learned Tribunal, thus by the Original Award



allowed the Petition granting the Insurance Company recovery rights. It is apposite to extract the relevant paragraph of the Original Award below:

“32. The Respondents have failed to produce the driving licence, even during proceedings before Tribunal. An inference can be drawn that there was no valid driving licence for the category required. Thus, the insurance company cannot be fastened with the liability and is entitled to recovery rights against the Respondents no. 1 and 2 as per law.”

[Emphasis supplied]

9.1 However, by the Impugned Award, the learned Tribunal has not taken into consideration the fact that the remit of the Court in the Earlier Judgment was limited to only a challenge on disability. The grant of recovery rights was not challenged by either party.

10. Learned Counsel for the Appellant also reiterates its contentions that the challenge in the present Appeal is only to the issue of recovery rights and that there is no challenge by the Respondent No. 1/Claimant to the amount as awarded by the learned Tribunal.

11. The record reflects that the owner of the offending vehicle did appear before the learned Tribunal in the second round. This is borne from the Impugned Award. Respondent No. 2/Owner in his Written Statement stated that the vehicle was duly insured and denied liability to pay compensation. The Respondent No. 3/Driver did not contest the claim. The Appellant, however, again contended a breach of terms and conditions of the Insurance Policy on the ground that the driver of the offending vehicle was not holding a driving licence authorising him to drive a Light Motor Vehicle [LMV (NT)]. It is apposite to extract paragraphs 2, 3 and 4 of the Impugned Award in this behalf below:

“2. The respondent No. 1/owner, in his written statement, stated that the offending vehicle was duly insured with the respondent No. 3 / insurer. He denied liability to pay compensation to the petitioner.



3. The respondent No. 2 / driver has not contested the accident claim case. He has not filed reply to the accident claim.

4. The respondent No. 3 / insurer, in its written statement, pleaded breach of terms and conditions of insurance policy on the ground that the driver of the offending vehicle was not holding a driving license authorizing him to drive LMV (NT).”

[Emphasis supplied]

12. Based on these submissions the following issues were framed by the learned Tribunal:

“ISSUES:

5. On the pleadings, following issues were framed:

(i) Whether the petitioner has suffered injuries in road side accident on 28.02.2010 involving vehicle i.e. RTV Bus bearing registration No. DL-IVA-2947 being driven allegedly in a rash and negligent manner by the respondent No. 1?

(OPP)

(ii) To what amount of compensation, if any, the petitioner is entitled to and from whom?

(GPP)

(iii) Relief”

12.1 The issues thus framed were whether the offending vehicle was being driven in a rash and negligent manner and, Secondly, to the compensation that the Claimant would be entitled to.

13. The learned Tribunal while deciding the issue of liability, however, gave a finding that the licence of the Respondent No.2/Driver was endorsed for transport vehicles on 11.11.2010 and relying on the judgment of the Supreme Court in *Mukund Dewangan v. Oriental Insurance Co. Ltd.*¹ held that the Appellant/Insurance Company is liable to pay compensation. The relevant extract of the Impugned Award is set out below:

“LIABILITY:

40. The respondent No. 3/insurer pleaded breach of terms and conditions of insurance policy on the ground that the offending vehicle is a light

¹ (2017) 14 SCC 663



passenger vehicle being rural transport vehicle (RTV) and the respondent No. 2 was holding driving license for non-transport vehicle. The respondent No. 2 was holding driving license for driving LMV (non-transport) for the period from 09.08.2001 to 08.08.2021. His license was endorsed for transport vehicle on 11.11.2010. However, the distinction, as sought to be drawn by the respondent No. 3/insurer, does not survive in view of judgment in Mukund Dewangan versus Oriental Insurance Co. Ltd., Civil Appeal No. 5826/2011 decided on 03.07.2017.

AWARD

41. As such, the respondent No. 3/insurer is liable to pay compensation in the sum of Rs. 13,67,000/- (after adjusting the amount already deposited and released to the petitioner) alongwith interest @ 9% per annum from the date of filing of petition (15.04.2011) till the date of award within one month..."

[Emphasis supplied]

13.1 The learned Tribunal after examining the contentions of the parties and while deciding the liability, passed a direction in the Impugned Award setting out that the recovery rights could not be granted.

14. The Original Award had however directed that all Respondents are jointly and severally liable to pay compensation to the Petitioner, however the principal responsibility is of the Appellant/Insurance Company in the following manner:

"30. The insurance company has examined Sh. Dharmender Kumar, DEO from Transport Authority, Mayur Vihar, Phase-I, Delhi as R3W1. **He testified that the driver of offending vehicle was not holding a valid driving licence as per this DL, he could drive only the vehicles under the category LMV (NT). In present case, he was driving a Gramin Sewa for which he was not authorized to ply on this DL and thus there is violation of conditions of policy.** In National Insurance Co. Ltd. Vs. Swaran Singh & Ors., (2004) 3 see 297, it was observed as : "The breach of policy conditions, e.g disqualification of driver of invalid driving license of the driver, as contained in sub-section (2) (a) (ii) of section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties."

The aforesaid decision of Three Judge Bench was later relied upon by Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Tulna Devi & Ors.,



(2009) ACJ 581.

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32. The Respondents have failed to produce the driving licence, even during proceedings before Tribunal. An inference can be drawn that there was no valid driving licence for the category required. Thus, the insurance company cannot be fastened with the liability and is entitled to recovery rights against the Respondents no.1 and 2 as per law.

[Emphasis supplied]

15. The Earlier Judgment was passed by this Court setting aside the Original Award and remitting the matter to the learned Tribunal only on a limited aspect which is for the calculation of the extent of disability of Respondent No.1/Claimant. The Coordinate Bench held that so far as concerns the issue of negligence or rash driving on the part of the RTV bus driver, the same was decided in favour of the Appellant and not challenged by an Appeal including by the insurer, and thus this finding had attained finality. It was further held that the Insurance Company had filed an Appeal questioning the assessment of functional disability and the addition of Rs.50,000/- towards future medical expenses. It is apposite to extract the relevant extract of the Earlier Judgment in this behalf below:

*“2. The contention of the claimant before the tribunal was that the RTV was driven by Pankaj Kumar (second respondent in the claim petition) in a rash manner it having struck against the claimant, he suffering injuries which have rendered him permanently disabled. The RTV is stated to be registered in the name of Hirdesh (first respondent before the tribunal). **The issue of negligence or rash driving on the part of the RTV driver was decided in favour of the claimant and the same is not challenged by any appeal including by the insurer. The said finding, thus, is taken as having attained finality.***

*3. **The tribunal by the impugned judgment dated 19.02.2016 awarded compensation in the sum of Rs. 13,41,712/- and directed the insurer to pay the same with interest @ 12 % per annum. In arriving** at the said amount of compensation, the tribunal added the future loss of income on the basis of conclusion that the claimant had suffered permanent functional disability to the extent of 100%, this, in contrast, to the disability certificate (Ex.PW-3/A) indicating the assessment by a board of doctors to be 75% permanent disability in relation to whole body. The tribunal also added Rs.50,000/- as*



compensation to take care of the needs for future treatment.

4. The insurance company has come up with MAC Appeal No.246/2016 questioning the assessment of functional disability to the extent of 100% and the addition of Rs.50,000/- towards future treatment, submitting it had **not basis** and also expressing grievance as to the rate of interest terming it as unduly high.”

[Emphasis supplied]

15.1 The Earlier Judgment was further held that the prime concern is to the extent of disability and that the observations recorded by the learned Tribunal do not have any basis. The Coordinate Bench in the Earlier Judgment further held that no proper evidence to reach the conclusion *qua* functional disability had been placed on record. Learned Counsel for the Claimant thus requested for an opportunity to lead additional evidence to prove his extent of disability and the effect on its capacity to earn his livelihood. The relevant extract in this behalf of the Earlier Judgment is below:

“10. The above state of evidence clearly shows that **Tribunal had not secured proper evidence to reach appropriate conclusion as to the nature of disability suffered by the Appellant or its effect** on functionality of the claimant to continue to earn his livelihood.

11. Faced with the above fact situation, the learned counsel for the **appellant fairly conceded that the contention of the insurance company on the basis of available record would have to be accepted. He, however, accepted that he may be given one more opportunity to lead appropriate evidence. The counsel for the insurance company submitted that she leaves the matter to the Court.**

12. **Having regard to the above fact-situation, it would be proper that the claimant is given one more opportunity to prove the extent of disability and its effect on his capacity to earn his livelihood. Thus, the impugned judgment is set aside, the matter is remitted to the Tribunal for affording additional opportunity to the claimant for further evidence only on the above aspect. Needless to add, the insurance company will be entitled to lead evidence in rebuttal, if any. After such opportunity has been afforded, the Tribunal shall re-consider the question of compensation including respecting the areas concerning which the insurer and the claimant have raised grievances before this Court.** While taking fresh decision, the Tribunal will not feel bound by the decision earlier taken by it on any of the



heads of damages - pecuniary or non-pecuniary. It must, however, bear in mind the relevant law on the subject.

13. The parties are directed to appear before the tribunal for further proceedings in accordance with law on 4th August, 2017.”

[Emphasis supplied]

16. The Earlier Judgment is clear in its remit. The parties were granted the opportunity to lead evidence and make their contentions *qua* functional disability of the claimant and how it impacted his livelihood.

17. Once the matter is remitted by the Court on a limited aspect, it is incumbent upon the learned Tribunal to examine that aspect and pass an award. The entire discussion in the Impugned Award is on the aspect of disability. However, towards the end of finding has been given that recovery rights cannot be granted by the learned Tribunal. This finding is beyond its remit especially in view of the fact that there was no challenge by any party on the ground of recovery rights.

18. No doubt, the judgment in ***Mukund Dewangan*** case has clarified the law including on the fact that no separate endorsement is required on a driving license of a particular vehicle. However, since the recovery rights granted to the Appellant were not subject matter of challenge by either party before this Court or before the learned Tribunal, the finding in this behalf was final. The finding thus could not be reversed in the manner it has been by given by the learned Tribunal.

19. In view of the foregoing discussions, the Appeal is allowed. The Impugned Award to the extent of grant of recovery rights is set aside. However, Respondent Nos. 2 and 3 are at liberty to take appropriate steps in accordance with law for redressal of their grievances, if any. Pending Applications also stand closed.



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20. The parties will act based on the digitally signed copy of the order.

SEPTEMBER 3, 2025/r

TARA VITASTA GANJU, J