(2012) 12 DEL CK 0093

In the Delhi High Court

Case No : Mac. App. 623 of 2012

National Insurance Company Limited APPELLANT

Vs

Shri Vishnu and Others RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0093

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant National Insurance Company Limited impugns a judgment dated 24.01.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 6,92,698/- in favour of the First Respondent, the Appellant''s plea of breach of terms and conditions of the policy was rejected. The quantum of compensation is not challenged by the Appellant. The only ground of challenge is that since the owner (Respondent No. 3 committed the breach of the terms and conditions of the policy, the Appellant was entitled to exoneration or in any case, the recovery rights could have been granted against Respondents No. 2 and 3.

2. This Court by order dated 30.05.2012 ordered for issuance of notice of the Appeal confined to Respondents No. 2 and 3 only.

3. While dealing with the issue of liability, the Claims Tribunal in Paras 23 and 24 observed as under:-

23. The insurance company has taken the defence that insurance is not liable to pay compensation amount as driver and owner have willfully committed the breach of the terms and conditions of the policy. In order to substantiate its claim, R3W1 stated before this court through his affidavit that insurer is not

liable to pay the compensation.

24. The insurer did not examine its own investigator who had investigated the matter regarding DL and permit. It has not been explained by the insurance company as to whether the investigator was available with it or not. Non-examination of the investigator by the insurance company is a great lapse on the part of the insurance company. R3W1 is not executor of the documents regarding verification of the permit and the driving license of the driver of the offending vehicle. Right of other party to cross examine frustrates when the witness who is the executor of the document has not been examined by a particular party. Moreover, even if we consider the report of the investigator to be correct, still the matter remains in considerable confusion zone. This is because as per the report of the permit, the record of the permit in the transport authority could not be traced. Regarding driving license, the report of the investigator is silent. Accordingly, the insurance company has not been able to prove the willful breach and not even the breach of the terms and condition of the policy. Accordingly, the prayer of the insurance company for recovery right stands rejected.

4. The Appellant Insurance Company claims that the owner (Respondent No. 3) did not possess any permit in respect of the vehicle involved in the accident and the driver (Respondent No. 2) did not possess a valid and effective driving licence to drive the vehicle on the date of the accident.

5. This Claim Petition was filed in the year 2006. The Appellant Insurance Company had all the means to summon the officials of the Transport Authority concerned to prove that the Respondent No. 3 did not possess any valid permit, but it was not done by the Appellant. Statement of R3W1 was only a hearsay evidence. He was not the author of the documents sought to be proved by him with regard to non holding of the permit by the Respondent No. 3. In the absence of the author, the document could be proved by any person who was conversant with the signatures of the author of the document. That was also not done. Moreover, no report was obtained with regard to driving licence placed on record for five years upto the decision of the Claim Petition in the year 2012. The Claims Tribunal''s reasoning in holding that the Appellant Insurance Company failed to discharge initial onus to prove the breach of the terms and conditions of the policy cannot be faulted.

6. The Appeal is devoid of any merit; the same is accordingly dismissed.

7. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.

