(2018) 09 DEL CK 0097

In the Delhi High Court

Case No : Miscellaneous Appeal No.193, 214, 215 Of 2018

New India Assurance Co Ltd APPELLANT

Vs

Gopal Malhotra & Ors RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0097

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

Sunil Gaur, JÂ Â Â Â Â

1. The above captioned three appeals arise out of common impugned Award of 10th January, 2018 vide which the Motor Accident Claims Tribunal

(hereinafter referred to as â??the Tribunalâ??) has granted compensation to respondent-Injured persons.Â Â

2. The challenge to the impugned Award by appellant-New India Assurance Co. Ltd. (hereinafter referred to as â??Insurerâ??) is on the ground

that the Tribunal has held that the driving licence of driver of the insured vehicle was found to be fake, but has failed to grant recovery rights against

owner of the insured vehicle.

3. The factual background of this case, as already noticed in the impugned Award, needs no reproduction as in these appeals, recovery rights are

sought against the owner of the insured vehicle.Â In the impugned Award, the Tribunal has refused to grant recovery rights to appellant-Insurer on

the ground that possibility of owner of the insured vehicle being misled by the driver of the said vehicle cannot be ruled out.

4. LearnedÂ counsel for Insurer places reliance upon Supreme Courtâ??s decisions in United India Insurance Co. Ltd. Vs. Lehru and Others,

(2003) 3 SCC 338, New India Assurance Co., Shimla Vs. Kamla and others, (2001) 4 SCC 342 and Skandia Insurance Co. Ltd. Vs.

KokilabenChandravadan and Others, (1987) 2 SCC 654 to submit that recovery rights ought to be granted against owner of the insured vehicle as due

diligence has not been exercised to ensure that the driver employed is competent to drive the insured vehicle. On the strength of the aforereferred

decisions, recovery rights are sought by Insurerâ??s counsel against owner of the insured vehicle.

5. On the contrary, learned counsel for owner of the insured vehicle supports the impugned Award and submits that the driving licence of the driver

did not appear to be fake and so, these appeals deserve dismissal.

6.Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that evidence has been led on behalf of owner

of the insured vehicle, but it is not stated in the evidence that the driving licence of driver of the insured vehicle on the face of it looked genuine or that

the owner had taken the driving test of driver and upon finding the said driver to be competent to drive, the owner of the insured vehicle had employed

him. Since evidence of owner on the aforesaid aspect is lacking, therefore, the Tribunal was not justified in jumping to a conclusion that owner of the

insured vehicle was misled by the driver.Â Â Since the evidence of owner of the insured vehicle on the aforereferred vital aspect is lacking,

therefore, the impugned Award is modified to the extent of granting recovery rights to appellant against driver and owner of the insured vehicle.Â

7.These three appeals are accordingly disposed of while modifying the impugned Award to the aforesaid extent. Â