(2010) 07 DEL CK 0190

In the Delhi High Court

Case No : M.A.C. Appeal No. 427 of 2007

New India Assurance Co. Ltd. — APPELLANT

Vs

Raj Kumar and Others — RESPONDENT

Date of Decision : 18-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 1 ACC 683

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Mohan Babu Aggarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—By way of the present appeal u/s 173 of the Motor Vehicles Act, 1988 the appellant, an Insurance Company, seeks to impugn the judgment and order dated 7.2.2007 passed by the Motor Accident Claims Tribunal, Delhi in Claim Petition No. 181 of 2003. The challenge in the appeal is within a very narrow compass. The appeal against the respondent Nos. 1 to 5, who were the claimants in the claim petition, was dismissed at the initial stage and the appeal was admitted only on the limited issue as to whether the appellant is entitled to recovery rights against the respondent Nos. 6 and 7, viz., the driver and the owner of the offending vehicle, being a TSR bearing No. DL 1R-F 4018, rash and negligent driving of which had resulted in the death of Veero Devi, wife of late Sadhu Ram, while crossing Old Rohtak Road in front of the Main Market, Kishan Ganj, New Delhi.

2. The respondent Nos. 6 and 7 despite service by publication of summons did not choose to appear to contest the appeal and were accordingly proceeded ex parte by order of this Court dated 4.3.2011.

3. Mr. Mohan Babu Aggarwal, the learned Counsel for the appellant Insurance

Company, was heard and the record of the Claims Tribunal was requisitioned and scrutinized. None appeared on behalf of the ex parte respondents.

4. The sole contention of Mr. Mohan Babu Aggarwal, the learned Counsel for the appellant, is that the award passed by the Claims Tribunal is liable to be set aside in view of the fact that the driving licence of the respondent No. 6, who was driving the offending vehicle at the time of accident, was only for LMV (non-transport) and not for commercial plying.

5. In the above context, Mr. Mohan Babu Aggarwal relied upon the testimony of R3W1, B.P. Singh, A.O., New India Assurance Co. Ltd., which is being reproduced hereunder in its entirety.

R3W1 Statement of B.P. Singh, A.O., New India Assurance Co. Ltd., Tolstoy Marg, New Delhi on SA:

We served a notice under Order 12 Rule 8, CPC to the driver and the owner of the vehicle for producing original D/L and original policy through our Advocate. Carbon copy of notice is Exh. R3W1/1. The said notice was issued by registered AD and UPC. The postal receipts are Exh. R3W1/2 and Exh. R3W1/3. The UPC is Exh. R3W1/4. I have brought the attested computerised copy of policy (running into three pages) in respect of vehicle bearing No. DL 1R-F 4018 and the same is Exh. R3W1/ 5. The original investigator''s report is Exh. R3W1/6. The investigator supplied us the copy of D/L of the driver which is marked ''A''. We got the licence verified and the original verification report issued by Licensing Authority, Ghaziabad is Exh.R3W1/7.

Signed by Mr. Umesh Rai. Advocate for claimants

We had not issued any instructions to investigator Subhash Chander Srivastava to appear before the Court.

6. On the basis of the aforesaid testimony of an official of the Insurance Company, the Counsel for the appellant contended that it stood established on record that the driving licence of the driver was not a valid and effective driving licence, in that the driver was driving a vehicle other than the one he was authorised to drive. 1 find no merit in the aforesaid submission of the learned Counsel for the appellant for the reason that the investigator, who is stated to be the author of the report Exh. R3W1/6 was not examined by the appellant Insurance Company to corroborate the fact that the aforesaid report was given by him nor any official from the concerned Transport Authority was summoned with the record to prove that the driving licence of the respondent No. 6 was not a valid and effective one on the date of accident. Significantly also, R3W1. B.P. Singh, who is the only witness examined by the appellant, unequivocally stated that the investigator supplied the copy of the driving licence of the driver, which was got verified from the Licensing Authority, Ghaziabad. From where the investigator procured the copy of the driving licence of the driver is not clear from the record. It also does not stand established on record that notice under

Order 12 Rule 8 of CPC was in fact served upon the respondent Nos. 6 and 7. There is, thus, not an iota of evidence on the record to substantiate the defence of the Insurance Company that there was the breach of policy conditions on the part of the insured. In view of the aforesaid, there is no merit in the present appeal. The same is accordingly dismissed.