(2017) 02 DEL CK 0388

In the Delhi High Court

Case No : 133 of 2009

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

SUMAN & ORS. RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citation : (2017) 02 DEL CK 0388

Hon'ble Judges : Sunil Gaur

Bench : SINGLE BENCH

Advocate : D. K Sharma

Judgement

1. Impugned Award of 3rd January, 2009 grants compensation of Rs.8,76,000/- with interest @ 7.5% per annum to respondents-claimants on account of death of one Subhash Chand in a road accident on 8th April, 2005. The facts are already noted in impugned Award and need not be adverted to for the reason that in this appeal, appellant-Insurer seeks recovery rights only against driver and owner of vehicle in question. Pertinently, the driver and owner of vehicle in question had neither contested before learned Tribunal nor before this Court. To support the stand that driving licence of driver of vehicle in question is fake, appellant had relied upon evidence of its Assistant Manager (R3W1) and evidence of concerned official from licencing authority.

2. On the aspect of driving licence in question being fake, the finding returned by learned Tribunal is as under:- "In fact the photocopy of the driving licence which had been marked A is showing to be bearing no. 4119/98 and is showing the date of issue as 18/08/2000, as such, neither any record pertaining to the year 1991 nor the year 1998 would have been relevant even if the same had been produced. The insurance company has failed to prove that driving licence of respondent no.1 had not been issued or that it was not valid on the date of the accident."

3. In this appeal, additional evidence has been led by appellant, but there is no

cross-examination as none had appeared on behalf of respondents despite service. The additional evidence led by appellant comprises of evidence of Vijay Pal Singh, an official from concerned Transport Authority. The Additional evidence led by this witness is to the effect that from 1st January, 1998 onwards, the driving licence in question has not been issued by the concerned Transport Authority. The precise submission advanced by learned counsel for appellant is that in face of additional evidence led, recovery rights ought to be granted to appellantInsurer.

4. Upon hearing and on perusal of impugned Award, evidence on record and the additional evidence led, I find that although the evidence of concerned official from Transport Authority concerned before Ld.

5. Tribunal was inconclusive to arrive at a finding that the driving licence in question was fake, but in view of the additional evidence led, it becomes quite evident that the driving licence in question is fake. Pertinently, the additional evidence led remains unchallenged. Relevantly, neither the driver nor the owner of vehicle in question had led any evidence and so, in such a situation, in view of unchallenged additional evidence, recovery rights ought to be granted to appellant. Supreme Court''s decision in Oriental Insurance Company Ltd. vs.

6. Zaharulnisha & Ors., (2008) 12 SCC 385 while dealing with a case of invalid or ineffective driving licence has reiterated that in the first instance, awarded compensation ought to be paid by Insurer with right to recover it from driver and owner of vehicle in question. Applying the afore-noted dictum of Supreme Court in Zaharulnisha (supra) to the facts of instant case, impugned Award is modified to the extent of granting recovery rights to appellant against owner and driver of vehicle in question.

7. Learned counsel for appellant-Insurer submits that in terms of order of 30th March, 2009, in this appeal, awarded compensation with interest has been deposited with learned Tribunal. If it is so, then appellant shall have the right to recover it, from driver and owner of vehicle in question, who are respondents No.6 & 7 in this appeal. Statutory deposit, if any, be refunded to appellant-Insurer as per Rules. With aforesaid directions, this appeal is disposed of.