(2012) 07 DEL CK 0297

In the Delhi High Court

Case No : MAC. APP. 599 of 2009

New India Assurance Company Ltd. APPELLANT

Vs

Shyam Lal and Others RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8

Citation : (2012) 07 DEL CK 0297

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

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Company Limited takes exception to a judgment dated 15.09.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 2,05,000/-, the Appellant''s plea to grant recovery rights was rejected. It is urged by the learned counsel for the Appellant Insurance Company that it had successfully proved the breach of the terms of the policy by examining R3W1 Dal Chand, LDC from RTO office, East Zone, Shahdara, Delhi and R3W2 Anil Kumar Sharma, Assistant Manager of the Appellant. Since it was established that the driving licence was fake, the Appellant was entitled to recovery rights on discharging its statutory liability to pay the compensation to the third party.

2. The driving licence DL No. C05022000138852 seized vide memo Ex.PW-1/3 by the police was got verified from the Transport Authority and it was revealed that the said licence had not been issued by the concerned Transport Authority.

3. First of all, I would refer to R3W2''s Anil Kumar''s testimony who deposed that a notice under Order XII Rule 8 CPC was issued to the driver and the owner. The notices were proved as Ex.R3W2/B and Ex.R3W2/C and the postal receipts and UPC were proved as Ex.R3W2/D and Ex.R3W2/E respectively. No other driving

licence was produced by the driver and the owner in spite of service of the notice. R3W1 Dal Chand testified that the driving licence No. C05022000138852 was not issued by their authority. He also proved a report Ex.R3W1/1 to this effect. He deposed that the said driving licence was fake. In cross-examination by the counsel for the Claimants, the witness deposed that since this number was not found in the computer, the driving licence was fake.

4. From R3W1 and R3W2''s testimonies it is clear that the driver and owner i.e. Respondents No. 3 and 4 failed to provide any other driving licence of the third Respondent and the licence seized by the police was fake.

5. Respondent No. 4 has not come forward with any explanation as to the circumstances under which the vehicle was entrusted to Respondent No. 3. Thus, he is guilty of conscious and willful breach of the terms of the policy. I am fortified in this view by a judgment of the learned Singh Judge of this Court in New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR 2007(II) Delhi 733 and the Supreme Court judgments in National Insurance Co. Ltd. Vs. Swaran Singh and Others, ; Sohan Lal Passi Vs. P. Sesh Reddy and others, and United India Insurance Company Ltd. Vs. Lehru and Others,

6. The impugned judgment is therefore liable to be set aside in so far as it declined recovery rights to the Appellant. I order accordingly and hold that the Appellant Insurance Company is entitled to recover the compensation paid from Respondents No. 3 and 4, the driver and owner of the vehicle. In execution of this very Judgment without having recourse to independent civil proceedings.

7. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

8. The Appeal is allowed in above terms. Pending Applications also stand disposed of.