(2009) 05 DEL CK 0396

In the Delhi High Court

Case No : Mac. App. 182 of 2009

Ram Kishore APPELLANT

Vs

Ram Saran and Others RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 149(2)

Citation : (2009) 05 DEL CK 0396

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : D.D. Singla, for the Appellant; Nikhil Majithia, for R-3, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby Rs. 1,15,300/- has been awarded to the appellant against respondent No. 2.

2. The accident dated 1st February, 2007 resulted in grievous injuries to the appellant who was travelling in the TSR which met with an accident with a Tata Tempo.

3. The appellant filed the claim petition before the learned Tribunal against the driver, owner and Insurance Company of the TSR.

4. The learned Tribunal passed the award of Rs. 1,15,300/- in respect of the injuries suffered by the appellant. The award has been passed against respondent No. 2 who is the owner of the offending vehicle. The vehicle was validly insured with respondent No. 3 but respondent No. 3 was exonerated from the liability on the ground that there is violation of the condition of the permit which required the permit holder to drive the vehicle himself.

5. Admittedly, there is a valid permit in this case. It is also not disputed that the

driver of the TSR was having a valid driving licence to drive the said vehicle. Since there is a valid permit in respect of the offending vehicle, the Insurance Company is primarily liable to pay the compensation to the claimant.

6. It may be noted that the Insurance Company cannot avoid the liability on any ground other than those mentioned in Section 149 of the Motor Vehicles Act. The defence raised by respondent No. 3 does not fall within any of the permitted defences u/s 149 of the Motor Vehicles Act.

7. The Learned Counsel for respondent No. 3 submits that Section 149(2)(a)(i)(c) provides that the Insurance Company can avoid the liability in the event of the use of a vehicle for a purpose not allowed by the permit where the vehicle is a transport vehicle. There is no violation with respect to the use of the offending vehicle as the offending vehicle is a TSR and was being used to carry the passengers and, therefore, it was being used for a permitted purpose.

8. The learned Tribunal correctly held in para 23 of the award that the Insurance Company is liable towards the third party and cannot avoid the liability. However, in the last para of the impugned award, the liability has been casted on the owner of the offending vehicle.

9. The appeal is accordingly allowed and the impugned award is set aside to the extent respondent No. 2 has been held liable to pay the award amount to the claimant. The primary liability to satisfy the impugned award is of respondent No. 3. The award passed by the learned Tribunal is, therefore, modified and respondent No. 3 instead of respondent No. 2 shall be initially liable to pay the award amount to the claimants. Respondent No. 3 is directed to deposit the entire award amount along with interest with the learned Tribunal within a period of 30 days. After satisfying the award against the claimant, respondent No. 3 is granted recovery rights to recover the award amount from respondent No. 2.

10. Copy of this order be given ''Dasti'' to Learned Counsel for the parties under signatures of Court Master.