

(2023) 08 DEL CK 0166

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 667 Of 2022, Civil Miscellaneous Application No. 30905 Of 2022

Ram Kumar

APPELLANT

Vs

New India Assurance Co. Ltd. & Anr.

RESPONDENT

Date of Decision : 17-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 149
Code of Criminal Procedure, 1973 — Section 340

Citation : (2023) 08 DEL CK 0166

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : B.S. Choudhary, Sneha Lata Rana, Ishwar Ahuja

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. This petition has been filed challenging the proceedings that have been initiated by the learned Motor Accidents Claims Tribunal-02, North, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in Execution No.272/2020, New India Assurance Co. Ltd. v. Ram Kumar & Anr. against the petitioner herein, seeking enforcement of the Award dated 22.12.2010 passed by the learned Tribunal in MACT Case no.269/10/07.

2. The learned Tribunal, by way of the above Award, while awarding compensation to the claimants therein, had granted a right in the respondent no.1 herein to recover the same, jointly or severally from the petitioner herein, who is the owner of the offending vehicle, and Mr.Shukhbir Singh, driver of the offending vehicle.

3. The petitioner is further aggrieved of the demand notice dated 05.05.2022 issued by the respondent no. 2 herein, issuing recovery certificate for recovering

a sum of Rs.41,99,490/- from the petitioner herein.

4. The learned counsel for the petitioner submits that the petitioner, as owner of the offending vehicle, had the requisite Permit and Certificate of Fitness, issued by the registering authority under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989, for the offending vehicle. He submits that, therefore, the entire compensation paid to the Claimants in the above Claim Petition, cannot be claimed by the respondent no.1 from the petitioner.

5. He further submits that the compensation amount has to be recovered from the driver of the offending vehicle and the petitioner herein in equal proportion.

6. He submits that pursuant to the interim order dated 15.07.2022 of this Court, the petitioner has already deposited approximately Rs.21 lakhs with the learned Registrar General of this Court. He submits that, therefore, the above execution proceedings and the demand notice issued by the respondent no.2 should be quashed.

7. On the other hand, the learned counsel for the respondent no.1 submits that the present petition is a gross abuse of the process of the Court. He submits that the petitioner/owner, alongwith the driver of the Offending Vehicle, namely Mr.Shukhbir Singh, had challenged the Award dated 22.12.2010 by way of an appeal, being MAC.APP.237/2017, Ram Kumar & Anr v. New India Assurance Co. Ltd & Ors. The said appeal was dismissed by this Court vide its judgment and order dated 08.07.2019.

8. He submits that the petitioner herein cannot reopen his challenge to the Award passed by the Tribunal by now challenging the execution proceedings initiated for the enforcement of the said Award.

9. I find merit in the submissions made by the learned counsel for the respondent no.1.

10. The learned Tribunal, by way of the Award dated 22.12.2010, while awarding compensation in favour of the claimants in the Claim Petition before it, had observed as under:

“Issue No. 3

Respondents no.1 and 2 in their written statement nowhere stated that respondents no.1 was having any valid driving license to drive the offending truck at the time of accident. They even had not disclosed the detail and particulars of the driving license in their written statement so that insurance company could get it verified R3W1 proved notice under order 12 Rule 8 CPC Ex. R3W1/A stated to respondents no.1 and 2 during evidence stage asking them to produce driving license of the respondents no.1 also. This notice was sent by registered post to both respondents vide postal receipts Ex.R3W1/2 and 3 which is presumed to be served upon them but they did not care to produce the valid and proper driving license of the respondent no.1 and to appear in the court to

give any other explanation. In such circumstances, by taking adverse interfere against respondents no.1 & 2, it can be said that respondent no.1 was not having any valid and proper driving license at the time of accident. This issue is thus decided against the respondents no.1 and 2 and in favour of respondent no.3.

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"Respondent no.3 had issued notice under order 12 Rule 8 CPC to the respondents no. 1 and 2 to produce the valid permit of the offending truck also but it was not produced nor anything about it is alleged in the written statement by them. Non compliance of the notice and not coming forward to contest the defence/averments of the respondent no.3, it can be held that offending vehicle had no valid permit at the time of accident so in such circumstances and due to breach of the conditions of the Insurance Policy, after relying upon the decision of Supreme Court given in Oriental Insurance Co. Vs. Zharulnisha AIR 2008 SC 2218, National Insurance Co. Ltd. Vs. Swaran Singh 109 (2010) DLT 304 and of our own High Court in case Oriental Insurance Co. Vs. Pyare Lal 2010 ACJ 1647, I am of the view that Insurance Company must pay the compensation at the first instance and then it can be given recovery rights to get the compensation amount recovered from driver and owner of the offending truck."

11. The petitioner herein challenged the above Award by way of an appeal, being MAC.APP.237/2017. In the said appeal, the petitioner herein produced a driving licence of the driver of the offending vehicle. This Court, vide its order dated 12.07.2017, recorded the admission of the learned counsel for the petitioner herein that the driving license produced by the petitioner herein, who was the appellant no. 1 in the said appeal, is fake. The learned counsel for the petitioner herein, however, submitted before the Court that there is another driving license of the driver which was valid and effective. On basis this statement, this Court directed an inquiry under Section 340 of the Code of Criminal Procedure, 1973 to be conducted.

12. The matter was inquired by the learned Joint Registrar (Judicial). Based on the Inquiry Report dated 11.09.2017 submitted by the learned Joint Registrar (Judicial), this Court had dismissed the appeal filed by the appellant, inter-alia observing as under:

"It is submitted on behalf of the appellants that at the time of the accident, appellant no. 2 had a valid driving licence issued by the State of Manipur. There is no explanation as to why the said driving licence, issued in Manipur, did not find any mention before the learned Tribunal or before this Court, in the earlier appeal filed by the insurance company, bearing number MAC. APP. 378/2011, which was disposed off on 30.10.2014.

Even in this appeal, which is pending since 10.03.2017, there has been no whisper of the said driving licence issued in Manipur. The matters before the learned Tribunal and before this Court have, thus far, proceeded on the basis of a driving licence issued by the Mathura Transport Authority (UP). The said DL has

been found to be fake as per the aforesaid inquiry report.

The Court is of the view that if the appellants did indeed have another driving licence as of the date of the accident, or if the vehicle owner had knowledge, on the basis of the documents, that the driver possessed a valid driving licence issued in Manipur, they would have ordinarily produced such valid driving licence and/or mentioned the same in their defence before the learned Tribunal or in the two proceedings before this Court. As it stands, the Court having already found that the driving licence produced by the driver was fake, the impugned order cannot be faulted with. The Court finds no reason to interfere with the same. The appeal is without merit and is accordingly dismissed.”

13. At the outset it is noticed that the petitioner did not disclose the fact of filing of the above appeal or the dismissal thereof, in the present petition. These facts were material to be disclosed upfront in the petition. The petitioner is therefore, guilty of concealment of facts and on this ground itself the present petition is liable to be dismissed.

14. It is also important to note here that this order passed in the appeal gained finality and was not challenged by the petitioner or the driver. Once the order had gained finality, no fault can be found with the learned Tribunal seeking to enforce the Award in accordance with the law.

15. The submission of the learned counsel for the petitioner, that the petitioner holds valid permit and fitness certificate for the offending vehicle and therefore, the petitioner be not made liable to reimburse the compensation amount to the respondent no. 1, cannot be accepted. The Permit or the Fitness Certificate was neither produced by the petitioner before the learned Tribunal nor filed with this petition. The same have only later been filed pursuant to the order dated 26.07.2023 of this Court.

16. Be that as it may, one of the grounds on which the learned Tribunal has allowed the respondent no.1 to recover the compensation amount from the petitioner herein is that the petitioner had failed to produce the valid driving licence of the driver for the offending vehicle in the proceedings before the learned Tribunal. Thereafter, before this Court, the petitioner alongwith the driver of the offending vehicle sought to produce a driving licence, however, the same was admittedly fake. They then sought to contend that the driver has another driving license. This Court did not believe the same and dismissed the appeal of the petitioner.

17. In terms of Section 149 of the Motor Vehicles Act, 1988, as was then applicable, one of the grounds on which the Insurance Company could seek the right to recover the compensation paid to the claimants from the owner/driver of the offending vehicle is, where the vehicle is being driven by a person who does not possess a valid driving licence. In the present case, this Court, in its judgment and order dated 08.07.2019, has allowed the respondent no.1 to recover the compensation amount from the owner/driver of the offending

vehicle, as it found that the driver was not holding valid driving licence as on the date of the accident. The question of permit and fitness certificate, therefore, fades into inconsequence.

18. As far as the submission of the learned counsel for the petitioner that by the Award dated 22.12.2010 passed by the learned Tribunal, the petitioner herein is liable to pay only 50% of the compensation to the respondent no.1 is concerned, it also cannot be accepted. The Award dated 22.12.2010 fastened the liability jointly and severally on the owner, that is, petitioner herein and the driver of the Offending Vehicle, to reimburse the compensation paid by the respondent no.1 to the claimants. Being jointly and severely liable, the petitioner would remain fully liable to reimburse the respondent no.1 of the compensation paid by the respondent no. 1 to the Claimants.

19. I therefore, do not find any merit in the present petition. The same, along with the pending application, is dismissed. The amount deposited by the petitioner before this Court pursuant to the order dated 15.07.2022, be released to the respondent no. 1 in partial satisfaction of the Execution Proceedings. The Execution Proceedings be continued in accordance with law.

20. There shall be no order as to cost.