(2012) 09 DEL CK 0516

In the Delhi High Court

Case No : MAC. APP. No. 477 of 2009

Ram Saran Chauhan APPELLANT

Vs

Shri Vishal Singh Alias Vishal Roshan and Others RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0516

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

Bench : Single Bench

Advocate : Shweta Singh, Proxy Counsel for Mr. Rajat Aneja, for the Appellant; Shantha Devi Raman, Advocate for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant Ram Saran Chauhan (owner of the motorcycle No. DL-4S-AU-4854) impugns the judgment dated 13th February, 2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a sum of Rs. 11,850/- in favour of Respondent No. 1, Insurance Company Respondent No. 3 was exonerated of its liability to pay the compensation on the ground that the Appellant committed willful breach of the terms of the policy. On the issue of negligence, the Claims Tribunal on appreciation of evidence found that the accident was caused due to the rash and negligent driving of the Toyata Qualis bearing No. DL-8CJ-9578 by Respondent No. 2. It was found that after the accident the injured was removed to Pranami Hospital where MLC was prepared. Respondent No. 1 claimed that he remained confined to bed for a period of two months. The X-ray did not reveal any bony injury. The Claims Tribunal thus, awarded a sum of Rs. 5,000/- towards pain and injury, Rs. 1850/-towards expenses on medical treatment, Rs. 2500/- towards expenditure on special diet and conveyance and Rs. 2500/- towards loss of earnings and enjoyment of life.

2. It is urged by the Learned Counsel for the Appellant that merely because the driver did not possess any driving license or the license held by the driver was fake, the Insurance Company could not avoid its liability.

3. The Claims Tribunal dealt with the issue of liability as under:-

8. Respondent No. 1 in its written statement made a categorical claim that driver of offending vehicle Respondent No. 1 was not holding valid license. Respondent No. 1 himself entered the witness box. He admitted that he was driving vehicle No. DL-8CJ-9578 on 20.10.05. He claimed that accident had occurred while he was trying to save a lady. He possessed a driving license which had been seized. License had been obtained by him from District Mau, Uttar Pradesh. Thereafter, he made a very strange claim. He claimed that he did not remember as to when he had obtained it. He did not have any copy of license. He did not have any receipt and finally clarified that he had not been tested by authorities before license was issued to him. Respondent No. 3 examined Mr. Amit Kumar. He testified that they had investigated about the license of Respondent No. 1 from the licensing authority Mau. They came to know that no license had been issued by the authority. They had issued notice u/o 12 Rule 8 CPC, copy of which was Ex. RW2/2. Insured had been called upon to produce original documents including driving license and badge of driver. The notice had been duly served upon insured. A.D. Card was Ex. RW2/4 while postal receipt was Ex. RW2/3. It became duty of insured to have produced the original driving license of the driver upon receipt of notice. He did not do so. Moreover, as I have already discussed earlier testimony of Respondent No. 1 regarding his driving license, does not generate even iota of confidence. I, therefore, hold that Respondent No. 1 driver of the offending vehicle did not possess any driving license at the time of accident. The issue is decided in favour of Respondent No. 3 and against Respondents No. 1 and 2.

4. Respondent No. 3 Insurance Company thus, issued notice to the Insured to produce the driving license. The driving license was not produced. The Appellant did not come forward with any explanation as to under which circumstances the vehicle was handed over to Respondent No. 2. Thus, the Claims Tribunal''s finding that there was a breach of the terms of the policy on the part of the Insured (the Appellant herein) cannot be faulted. Normally, it is for the authorized insurer to perform its statutory obligation to satisfy the award in the first instance and then to recover the compensation paid, from the owner and the driver.

5. In the instant case as stated above, a small amount of compensation of Rs. 11,850/- along with interest @ 7.5% per annum was awarded from the date of filing of the petition till the date of deposit. Statutory amount of Rs. 25,000/- has already been deposited by the Appellant at the time of filing of the Appeal.

6. In the circumstances, it is directed that the amount of compensation awarded to Respondent No. 1 along with interest upto the date of this order shall be released to Respondent No. 1 from out of the statutory amount. The balance amount shall be refunded to the Appellant along with interest, if any, accrued on the statutory deposit.

7. The Registry shall issue notice to Respondent No. 1 to come forward to collect the amount.

8. The Appeal is disposed of in the above terms. Pending applications also stand disposed of.

