
(2009) 04 DEL CK 0515
In the Delhi High Court
Case No : MAC. APP. 468 of 2008

R.C. Gupta and Another

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0515

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

Bench : Single Bench

Advocate : Rajeev Shukla, for the Appellant; D.D. Singh and Navdeep Singh for R-1, for the Respondent

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby recovery right has been given to respondent No. 1 to recover the award amount against the appellant.

2. The accident dated 11th August, 2005 resulted in injury to claimant/respondent No. 2 who filed the claim petition before the learned Tribunal. The learned Tribunal awarded Rs. 1,38,048/- to claimant/respondent No. 2. The learned Tribunal further held the driving licence of the driver of the offending vehicle to be fake and therefore, the recovery right was given to respondent No. 1 to recover the award amount against the appellant. The learned Counsel for the appellants submit that they have placed on record the driving licence No. 14310 issued by Licencing Authority, Mathura and the Insurance Company summoned the witness from Licencing Authority, Mathura to produce the record relating to the said licence but no witness came from Licencing Authority, Mathura and, therefore, no finding has been given by the learned Tribunal relating to the said driving licence.

3. I have perused the record of the learned Tribunal which shows that respondent No. 1 filed an application dated 4th October, 2007 for summoning the witnesses including Licencing Officer, Motor Vehicle Department, Mathura to appear and

produce the record of the driving licence No. 14310 issued on 9th July, 2004 as per the copy of the driving licence verification and also produce the application of Pinku Raja for driving licence for motorcycle, LMV and HMV so issued. The record further shows that the summons were in fact issued to the Licencing Authority, Mathura and were duly received by the Licencing Authority, Mathura on 12th December, 2007 for appearance on 16th January, 2008. However, the witness from the Licencing Authority, Mathura did not appear on 16th January, 2008 and, therefore, the case was fixed for 26th March, 2008 when the respondent's evidence was closed. On 11th April, 2008, respondent No. 1 filed an application for re-opening the evidence which was allowed and one more opportunity was granted to respondent No. 1 to lead evidence on 19th May, 2008. The evidence of respondent No. 1 was again closed on 19th May, 2008 and the final arguments were heard.

4. The learned Counsel for the appellant submits that respondent No. 1 had taken on himself to summon the witness from Licencing Authority, Mathura and since respondent No. 1 failed to prove that the licence issued by Licencing Authority, Mathura was fake, the appellant should not be made to suffer on this account.

5. The learned Counsel for respondent No. 1 submits that the appellant could not have held two driving licences.

6. The learned Tribunal has not given a finding on the driving licence issued by the Licencing Authority, Mathura.

7. In the facts and circumstances of this case, the award of the learned Tribunal is set aside in so far as the recovery rights have been given to respondent No. 1 against the appellant. The case is remanded back to the learned Tribunal to record the evidence of the parties with respect to the driving licence issued by the Licencing Authority, Mathura to the driver of the offending vehicle. After recording the evidence of both the parties, the learned Tribunal shall give a finding on as to whether the driving licence issued by the Licencing Authority, Mathura is genuine or not and secondly on the effect of the driver of the offending vehicle holding two driving licences. The evidence of respondent No. 1 shall be recorded first and thereafter the appellant shall lead the evidence in rebuttal.

8. The parties are directed to appear before the learned Tribunal on 11th May, 2009.

9. Copy of this order be given "Dasti" to learned Counsel for the parties under signatures of Court Master.