
(2008) 03 DEL CK 0269

In the Delhi High Court

Case No : Mac. App No. 345 of 2007

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sh. Kali Prasad and Others

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

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

Citation : (2008) 03 DEL CK 0269

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 29.1.2007 wherein the tribunal awarded a sum of Rs. 1,56,466/-- as compensation along with interest @ 9% per annum holding the appellant as well as respondent owner jointly and severally liable to pay the compensation.

2. By way of the present appeal, the appellant seeks to challenge the impugned award to claim recovery rights against the owner of the offending vehicle.

3. The brief facts of the case inter alia are that on 18.2.2000 when the injured respondent Shri Kali Prasad was going on his cycle towards Tuglak Road Chambray, he was hit by a scooter bearing registration No. DL-4S-W-2588 being driven by the driver of the said vehicle in a rash and negligent manner.

4. Despite service of notice upon the owner of the offending vehicle, the respondent owner has not chosen to appear in the matter. Counsel for the appellant contends that the appellant insurance company has proved report of the Investing Officer Ex. R3W1/C so as to establish the fact that the driver of the offending vehicle was not holding the driving licence on the date of the accident.

5. I have heard Shri Pankaj Seth, Counsel for the appellant and have perused the

record.

6. Para 9 of the impugned award shows that the appellant had produced the official of insurance company who stated on oath that the insurance company had appointed an Investigating Officer to find out that if driver of the offending vehicle was holding a valid driving licence on the date of the accident or not. The said witness proved the report of the Investing Officer as Ex. R3W1/C. Considering the said evidence as weakest piece of evidence adduced by the insurance company, the Tribunal did not feel satisfied to hold that the driver of the offending vehicle was not holding the valid and effective driving licence. The said para 9 of the impugned award is reproduced as under:

The Insurance Company took a plea that in their written statement that they are not liable to pay compensation as R-1 was not holding a valid and effective Driving License at the time of accident. In support of its contention, the Insurance Company has examined R11 Shri S.S. Raghav who stated on oath that Insurance Company had appointed an Investigating Officer to find out if driver Jatin was holding a valid driving license on the day of accident or not. The witness proved the report Ex.R1W1/C to the effect that driver Jatin told him that he was not possessing any driving license on the day of accident. This is the weakest evidence being produced by the insurance company. They are relying on a statement purportedly made by R-1 to their Investigating Officer. The Insurance Company had not led any cogent evidence so as to prove that R1 was not holding a valid and effective driving license at the time of accident.

7. It is apparent that the appellate insurance company has failed to prove on record, by any reliable or cogent evidence, the alleged fact of driver of the offending vehicle not holding valid driving licence on the relevant date of the accident. I find myself in agreement with the observations made by the Tribunal that the appellant had produced the weakest form of evidence whereby the witness proved the report as Ex.R3W1/C made by the Investigation Officer to the effect that driver Shri Jatin had told him that he was not possessing any driving licence on the day of the accident. The appellant did not serve any notice on the owner of the driver of the offending vehicle under Order 12 Rule 8. The appellant also did not take any steps to summon the records of the concerned Licencing Authority and so much so even the Investigation officer was also not produced in the witness box.

8. In the light of the above discussion, I do not find any infirmity or illegality in the impugned order.

9. The appellant is not entitled to grant of recovery rights as claimed in the present appeal.

10. The appeal stands dismissed.