

(2017) 11 DEL CK 0438

Delhi High Court

Case No: MAC. Appeal No. 381 Of 2012

National Insurance Company Ltd

APPELLANT

Vs

Jang Singh & Ors

RESPONDENT

Date of Decision: Nov. 15, 2017

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 12 Rule 8, Order 12 Rule 18
- Motor Vehicles Act, 1988 - Section 3, 181

Hon'ble Judges: R.K.Gauba, J

Bench: Single Bench

Advocate: Neerja Sachdeva

Final Decision: Disposed Of

Judgement

R.K.Gauba, J

1. By judgment dated 25.01.2012, the Motor Accident Claims Tribunal while deciding the accident claim (Case No.679/2009) filed for and on behalf of

the first respondent (claimant) on 28.08.2009 awarded compensation in his favour in the sum of Rs.3,24,325/- with interest @ 7.5% p.a. on account of

injuries suffered in motor vehicular accident that occurred on 04.08.2009 due to negligent driving of motor cycle bearing No. DL-4S-AL-6146

(motorcycle) by the second respondent (the driver), and fastened the liability to pay on the appellant (insurer), it concededly having issued an insurance

policy covering third party risk in respect of the motorcycle at the instance of its registered owner, the third respondent (the owner), rejecting its plea

of breach of terms and conditions of the insurance policy.

2. The appeal is pressed by the insurer only to reiterate that it had been proved before the tribunal, with no contest, that the driver did not hold a valid or effective driving license at the relevant time and, therefore, at least recovery rights should have been granted against the second and third respondents, they being the driver and owner respectively of the motorcycle.

3. The second and third respondents did not appear in spite of due service in the appeal. The record of the tribunal would show that when the aforesaid plea was raised by the insurer, particularly at the stage of evidence, the driver and owner would not participate. No evidence was led on their behalf. On the other hand, the insurer had examined Shiv Raj Kanwal (R3W1) its Assistant Manager, who deposed on the strength of his affidavit (Ex.R3W1/A). The witness while conceding that an insurance policy had been issued at the instance of the third respondent, proved that the notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) had been issued (vide Ex.R3W1/1) and sent both to the registered owner (third respondent) as also the driver (the second respondent) by post (Ex.R3W1/2), the notice addressed to the third respondent, however, having returned (Ex.R3W1/2A) with report that he had left the place without forwarding address.

4. The insurance company also relied on the report of investigation by the police (Ex.R3W1/4) according to which the second respondent (the driver) had been prosecuted, inter alia, for the offence under Section 3 read with Section 181 of Motor Vehicles Act, 1988 on the allegations that he was not holding a valid or effective driving license at the relevant point of time.

5. The Tribunal was not satisfied with the aforementioned evidence for the reason that the insurance company had failed to show that the driver had been convicted for the said offence under Section 3 read with Section 181 of the Motor Vehicles Act, 1988.

6. In the considered view of this Court, the approach of the Tribunal was wholly erroneous. The insurer could only show that it had made efforts to secure the confirmation from the owner or driver of the offending vehicle as to the due authorization of the driver to be at the wheels of the offending vehicle. It had sent the notice under Order XII Rule 18 CPC to the registered owner at the address given in the insurance policy. It did not have to

send the same to any other address. It could not be expected to go on a wild goose chase to trace out the owner. Be that as it may. Since the owner

and the driver had due notice of the pending inquiry before the tribunal, it was their bounden duty to participate. They did not contest the evidence led

by the insurance company which, in the facts and circumstances, per force, had to be negative. The positive evidence that the driver did hold a valid or

effective driving license could only be mustered and presented by the driver or owner. Since they have consistently omitted to participate, the natural

inference is that they are unable to show that the driver did hold such a valid or effective driving license.

7. The defence of the insurance company cannot be contingent upon the result of the criminal prosecution in the corresponding case.

8. In the foregoing facts and circumstances, the appeal is allowed. The insurance company is granted recovery rights against the second and third

respondents. For enforcement of such rights it may approach the tribunal by appropriate execution application.

9. By order dated 13.04.2012 the insurance company was directed to deposit the entire awarded amount with the Registrar General. By order dated

03.12.2012, the said deposited amount was permitted to be released to the claimant. No further directions therefore are called for in this regard.

10. Statutory amount shall be refunded.

11. The appeal is disposed of in above terms.