

(2013) 09 DEL CK 0048
Delhi High Court
Case No: MAC. APP. 895 of 2012

ICICI Lombard Gen
Insurance Co. Ltd.

APPELLANT

Vs

Ramwati and Others

RESPONDENT

Date of Decision: Sept. 23, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 8
- Motor Vehicles Act, 1988 - Section 172, 181, 3

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: Navneet Kumar, for the Appellant; Navneet Goyal, for R1, for the Respondent

Final Decision: Disposed Off

Judgement

Suresh Kait, J.

CM. NO. 14153/2012 (For Delay)

1. Vide the instant application, applicant/appellant is seeking condonation of delay of 60 days in filing the instant appeal. Ld. Counsel appearing on behalf of the respondent no. 1/claimant submits that he has no objection, if the instant application is allowed.

2. In view of above, delay of 60 days is condoned.

3. Accordingly, application disposed of.

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4. Vide the instant appeal, appellant has assailed the award dated 07.03.2012, whereby Id. Tribunal has granted compensation of Rs. 70,434/- in favour of respondent no. 1/claimant for the injuries sustained in the accident took place on 05.11.2006.

5. Id. Counsel appearing on behalf of the appellant has argued that claimant did not lead any evidence for the period from 01.07.2008 to 02.09.2011, and to this effect Id. Tribunal has passed the order dated 13.05.2011 that the interest shall not be given from 01.07.2008 to 02.09.2011.

6. Id. Counsel appearing on behalf of the respondent no. 1/claimant fairly conceded and submitted that the Id. Tribunal has ignored this fact and granted the interest on the compensation for the above noted period.

7. Keeping in view the statement of the Id. Counsel for the respondent no. 1/claimant, the award dated 07.03.2012 is set aside to the extent that respondent no. 1/claimant shall not be entitled for the interest from 01.07.2008 to 02.09.2011.

8. The second ground argued by the Id. Counsel for the appellant is that the driver of the offending vehicle was not having valid driving licence. The appellant sent a notice under Order 12 Rule 8 CPC, but neither the driver nor the owner of the offending vehicle produced the driving licence.

9. Id. Counsel submits that Police has filed a charge sheet u/s 3/181 of Motor Vehicles Act that the driver of the offending vehicle was driving the vehicle without any effective driving licence. Despite the facts noted above, Id. Tribunal failed to grant the recovery rights in favour of the appellant.

10. I note Id. Tribunal has recorded in the impugned award that as per the Provisions of Section 172 of the Act, the appellant need to verify all the facts before filling the written statement, however failed to do so.

11. In the present case, neither the owner nor the driver produced any licence. Therefore, there was no occasion for the appellant/insurance company to verify and lead the evidence to that effect.

12. Settled law of evidence is that the fact within the knowledge of any person, the burden of proving the fact is upon him, therefore, in the absence of the licence, there was no occasion for the Insurance company to lead evidence to prove that the driver of the offending vehicle was not having any valid licence.

13. The driver and the owner of the offending vehicle preferred not to appear before the Id. Tribunal despite service. Same is the position before this court. It was the duty of the driver or owner to prove that driver of the offending vehicle was having valid licence on the date of accident. But they failed to do so.

14. Therefore in the facts and circumstances of the case, I grant the recovery rights to the appellant to recover the amount from the respondent/owner of the offending vehicle.

15. Vide order dated 30.08.2012, principal amount deposited was directed to be released in favour of respondent no. 1/claimant.

16. With the disposal of the appeal, Branch Manager, UCO Bank, Delhi High Court Branch is directed to release the balance amount in favour of respondent no. 1/claimant with interest accrued on the compensation amount except for the period from 01.07.2008 to 02.09.2011.

17. Statutory amount be released in favour of the appellant/Insurance Company and interest for the period noted in Para above. Accordingly, instant appeal stands disposed of.

CM. No. 14150/2012 (Stay)

With the disposal of the appeal itself, this application has become infructuous. The same is accordingly disposed of.