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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.03.2022

+ **MAC.APP. 54/2022**

M/S GARG ROAD LINES & ANR. Appellants

versus

NATIONAL INSURANCE CO. LTD & ORS. Respondent

Advocates who appeared in this case:

For the Appellants: Mr. Mayank Khurana, Advocate.

For the Respondent: Mr. Manoj Ranjan Sinha and Mr. Aaditya, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM. APPL. 9938/2022

Exemption is allowed, subject to all just exceptions.

CM. APPL. 9939/2022

1. Appeal impugns order dated 18.02.2020. The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Motu Writ Petition (Civil) No.3 of 2020 had suspended the period of limitation in view of the ongoing pandemic. Accordingly, there is no delay in filing the appeal.

2. The application is disposed of.

MAC.APP. 54/2022 & CM. APPL. 9937/2022

1. Appellant impugns award dated 18.02.2020 to the limited extent that it grants recovery rights to respondent No.1/insurance company against the appellant.

2. The impugned award has also been impugned by the insurance company on its merits. However, since the appeal pertains only to grant of recovery rights to the insurance company, notice is restricted only to the insurance company

3. With the consent of parties, the appeal is taken up for final disposal.

4. Learned counsel for appellant submits that the Tribunal has erred in holding that there was no valid driving license in favour of the driver, who was driving the offending vehicle and that the driving license was fake.

5. He draws attention to para 31 of the impugned order where the testimony of an officer from the Transport Authority (R3W1, Rajendra Kumar) has been referred to wherein he has deposed that there is no record of any license having been issued in the name of Anoop Kumar between the period 23.01.2003 to 22.01.2023.

6. Learned counsel for appellant relies on the website of the RTO,

wherein it is being shown that the driving license number 530/FKB/2006 is issued in the name of Anup Kumar on 22.01.2003.

7. It is noticed that the officer who had appeared from the RTO and had stated that from 23.01.2003 to 22.01.2023, no license had been issued in the name of the offending driver. The website shows that the driving license was issued on 22.01.2003, which is outside the period referred to by the said witness.

8. Further, learned counsel for petitioner contends that the driver had undergone the requisite training for transporting hazardous goods and as such there was no specific requirement for endorsement on the license. He relies on the judgment of a coordinate bench of this court dt. 12.10.2017 in MAC.APP. 1043/2016, titled "*National Insurance Co. Ltd. Vs. Sonia Mittal & Others*".

9. Learned counsel further submits that the permit could not be produced before the Tribunal. However, he has filed the same before this Court.

10. Learned counsel prays that the matter be remitted on the limited extent of grant of recovery rights to enable the appellant to lead further evidence.

11. Contention of learned counsel for the insurance company is that the appellant did not produce the relevant records before the Tribunal

and accordingly it has caused prejudice to the insurance company and in case the matter is to be remitted, appellant should be put to some terms.

12. In view of the fact that the impugned award relies on the testimony of the witness from the RTO, who has referred to the period from 23.01.2003 to 22.01.2023 and the driving license alleged to have been issued in favour of the driver is allegedly issued on 22.01.2003 and the website of the RTO is even as on date is showing the same having been issued and further the fact that the appellant has produced the certificate of training as well as the permit of the said vehicle valid during the relevant period, it is a fit case for a remit to the Tribunal on the limited extent of the grant of recovery rights against the appellant.

13. Accordingly, the appeal is allowed to the limited extent that it grant recovery rights against the appellant, subject to payment of costs of Rs.25,000/-.

14. Parties shall appear before the Tribunal for directions on 25.03.2022. The Tribunal shall thereafter endeavour to conclude the recording of evidence on the limited aspect of grant of recovery rights and pass a fresh award expeditiously.

15. The appeal is disposed of in the above terms.

16. The statutory deposit made by the appellant be adjusted towards

the costs to be deposited by the appellant. Accordingly, the Registry is directed to pay the said amount of Rs. 25,000/- alongwith interest, if any, accrued thereon to the Horticulture Department of the CPWD for being utilized for infrastructural development in the Budha Jayanti Park.

17. It is clarified that this order will have no bearing on the rest of the award passed by the Tribunal and shall be without prejudice to the appeal filed by the insurance company and the defence of the claimants therein.

SANJEEV SACHDEVA, J

MARCH 09, 2022

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