

ITEM NO.8

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2010
CC 6108/2010

(From the judgement and order dated 04/12/2009 in MACA No. 175/2005
of The HIGH COURT OF DELHI AT N. DELHI)

ORIENTAL INSURANCE CO.LTD.

Petitioner(s)

VERSUS

KAMLESH & ORS.

Respondent(s)

IA 1 (C/delay in filing SLP and office report)

Date: 26/04/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Ashutosh Verma, Adv.
Mr. Manish Pratap Singh, Adv.
Mr. Pratyush Kumar Sinha, Adv.
Mr. Ravi Shanker, Adv.
Mr. Amber Sayed, Adv.
Mr. Hari Om Gautam, Adv.
For Mr. Anish Kumar Gupta,A.O.R.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

This petition filed by Oriental Insurance Company Ltd. questioning the judgment of the learned Single Judge of Delhi High Court, who declined to interfere with the award passed by Motor Accident Claims Tribunal, Delhi (for short "the Tribunal") is a piece of frivolous litigation and the same is liable to be dismissed with costs at the threshold.

In the accident, which occurred on 6.8.1997 between two scooters, Joginder Singh aged 28 years

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suffered fatal injuries. In the written statement filed on behalf of the petitioner, various objections were raised to contest the claim filed by the dependents of Joginder Singh. The Tribunal, after analyzing the pleadings and evidence of the claimants and the petitioner concluded that accident was caused due to rash and negligent driving of scooter No.DL 4 SR 2364 by respondent no.7 - Vijay Kumar. The Tribunal then considered the income of the deceased, applied the multiplier of 18 and awarded compensation of Rs.10,90,000/- along with interest at the rate of 9%. The issue relating to validity of driving licence of respondent no.7 was dealt with by the Tribunal in the following manner:

"19. The Respondent No. 3 had examined Respondent No. 4 Kavita who has deposed that she did not know if Vijay Kumar was having a valid driving licence as he never enquired from him and had never seen one. She was also not aware if he was having the driving licence.

20. The Respondent No. 3 has further examined R3W2 Oma, ADM, Oriental Insurance Company who has produced the certified copy of charge sheet filed by the police against Vijay Kumar in FIR no. 479/97 u/s 279/337/304 IPC u/s 3/181 Motor Vehicle Act. It is further deposed that the driver was not holding a valid driving licence at the time of accident and thus, the terms and conditions of the policy have been willfully violated.

21. It is no doubt true, that the challan which was filed against Respondent No. 1 was also u/s 3/181 Motor Vehicles Act i.e. he was

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found to be without driving licence at the time of accident. However, merely because the challan had been filed does not mean that it stands proved that RW1 was not holding a valid driving licence. There is no notice served u/o 12 R 8 by Respondent No.3 on the driver to produce the driving licence. The Respondent No.1 may not have been found that the driving licence at the time of accident that does not imply that he was in fact not holding any valid driving licence. The Respondent No.4 may not have enquired about the driving licence of Respondent No.1 but again, that does not show that Respondent No.1 was not holding any valid driving licence. The Respondent No.3 has not been able to prove that Respondent No 1 was not holding a valid driving licence at the time of accident and thus, it has not been able to prove that it is not liable to pay the compensation. The Respondent No. 1, 3 and 4 are thus, unable to show that they are not liable to pay the compensation. There is no evidence to show that Respondent No.2 was the owner or has any liability to pay the compensation."

The learned Single Judge referred to the averments contained in para 17 of the counter filed by the petitioner before the Tribunal and observed that in the absence of a specific plea having been raised and evidence led in support thereof, the Tribunal had rightly concluded that the petitioner had failed to prove that the driver of the offending vehicle i.e. respondent no.7 herein did not have valid driving licence.

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In our view, there is no valid ground or justification to interfere with the award of the Tribunal, which has been confirmed by the High Court.

The special leave petition is, accordingly,
dismissed.

For filing a frivolous petition like the
present one, the petitioner is saddled with cost of
Rs.25,000/-, which shall be deposited with Delhi Legal
Services Authority within a period of one month from
today.

The Registry is directed to forward a copy of
this order to the Secretary, Delhi Legal Services
Authority, who shall at the end of one month's period
report to the Court whether or not cost of Rs.25,000/-
has been deposited by the petitioner.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master