

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

MAC APP NO. 425/2007

Judgment delivered on: February 20, 2008

United India Insurance Co.Ltd.

..... Appellant.

Through: Mr. K. Venkatraman, Advocate.

versus

Smt. Savita Tyagi & Ors.

..... Respondents

Through: Mr. J.S. Kanwar for respondents 1 &  
2.

Mr. A.K. Soni for respondent no.3.

Mr. D.K. Singh for respondent no.4.

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR,**

- |                                                                              |     |
|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J. Oral:**

By way of the present appeal, the appellant has sought to

challenge the award dated 5.5.2007 , whereby the appellant has been made liable to pay to the extent of 50% and satisfy the award along with the insurer of the other offending vehicle i.e., Oriental Insurance Co. Ltd.

Brief facts to deal with the contentions raised by the parties are as under:

On 19.5.2003 at 1.15 A.M., a tempo bearing registration no. HR 38-D-5688 was in motion, suddenly another Tempo bearing registration no. DL1L-E-3807 applied the brakes without any indication and as a result of which Tempo bearing registration no. HR38-D-5688 collided with the said Tempo due to which the deceased Deepak who was employed as a cleaner in Tempo bearing registration no.HR 38-D-5688 received fatal injuries and died on the spot.

I have heard counsel for the parties and have perused the record.

Mr. K. Venkatraman, counsel for the appellant contends that as per the evidence on record, it was sufficiently proved that the vehicle which was insured with the appellant insurance

company was not being driven in rash and negligent manner and therefore, no liability can be fastened on the insurer of the vehicle bearing registration no.DL1L-E-3807 by the Tribunal. In support of his argument counsel for the appellant has invited my attention to the deposition of ASI Shri Jagga Nath Prasad who in his cross-examination categorically stated that the Tempo bearing registration no.DL-1LE-3807 did not commit any mistake at the time of the accident as the said vehicle was hit from the back side by the other tempo bearing registration no. HR-38D-5688 which was insured with respondent no.3. Counsel for the appellant has also invited my attention to the deposition of Shri Raju, driver of the vehicle insured with the appellant, where he categorically stated that there was no negligence on his part in causing the said accident. Counsel thus contends that the appellant cannot be made liable to pay any amount towards the compensation. In the alternative, counsel for the appellant also sought to urge that if the negligence on the part of the driver of the vehicle insured with the appellant is taken to have been proved, then at least the appellant is entitled to recovery rights against the owner insured. In support of his

contention counsel for the appellant has placed reliance on the deposition of Mr. Raju who in his testimony has clearly stated that he was competent to drive LMV (Commercial) w.e.f. 7.10.2003 and LMV (Taxi) w.e.f. 13.10.99. Counsel for the appellant has also placed reliance on the photocopy of the driving licence which is at page 45 of the paper book to contend that perusal of the said photocopy clearly shows that said Raju, driver of the Tempo bearing registration no. DL1L-E-3807 was competent to drive LMV(Commercial) w.e.f. 7.10.2003 and prior to that he was only competent and authorised to drive LMV (Taxi) w.e.f. 13.10.99. Counsel thus urges that in view of the said deposition and copy of the driving licence at least, the recovery rights can be given to the appellant insurance company to recover the amount from the owner of the insured vehicle who has violated the terms and conditions of the policy by taking the services of the driver who was not competent to drive LMV (Commercial) on the relevant date of the accident. In support of his arguments counsel for the appellant has placed reliance on the following judgments.

1. New India Assurance Co.Ltd. Vs. Prabhu Lal-1(2008 ACC 54(SC)

2. New India Assurance Co.Shimla Vs. Kamla & Ors., ETC.-I(2001) ACC 346 (SC)
3. Oriental Insurance Co.Ltd. Vs. Sumegha Sharma & Ors.-I(2008) ACC 271 (DB)
4. Karamjit Kaur & Ors. Vs. Kulbir Singh & Ors.-2007(4) TAC 656 (P&H)
5. New India Assurance Co. Ltd. Vs. Hardeep Singh-2007(4) TAC 659 (J&K).
6. Punjab & Haryana High Court Vs.Surjit Kaur & Ors.-I(2008) ACC 301
7. Arat Das & Ors. Vs. Shailendra Kumar Nayak & Ors.-2007 (4) TAC 341 (Ori.)

Per contra Mr. J.S. Kanwar, counsel for respondents 1 & 2, Mr. A.K. Soni counsel for respondent no.3 and Mr. Prem Singh counsel for respondent no.4 submits that the claim petition filed by the claimants was not under Section 166 of the Motor Vehicles Act but the same was filed under Section 163-A of the Motor Vehicles Act. Counsel for the respondents thus sought to contend that since the petition was filed under Section 163-A of the Motor Vehicles Act, therefore, no negligence was required to be proved by the claimants for claiming the compensation as envisaged under Section 163-A of

the Motor Vehicles Act. The counsels for respondents have also invited my attention to the issue no.1 framed by the Tribunal, after the same was re-casted. The same is reproduced as under:

“1. Whether the deceased Deepak, died consequent to the accident on 19.5.03, involving vehicle numbers HR38-D-5688 and DL1L-E-3807 which occurred within the jurisdiction of PS Khajoori Khas, Delhi.”

I find merit in the submission of counsel for respondents that once the claim petition was filed under Section 163-A of the Motor Accidents Act, the aspect of negligence was not required to be proved by the claimants. It is not in dispute that both the vehicles which were insured with the Oriental Insurance Co. Ltd. as well as with the appellant herein were involved in the accident which resulted into the death of Mr. Deepak on account of fatal injuries received by him, therefore, no fault can be found with the dictum of the Tribunal holding both the insurance companies equally liable to pay the compensation amount. The first contention raised by the counsel for the appellant thus has no merit. Even otherwise both the insurance companies are public companies and transfer of liability from one insurance company to other insurance company would not

give any special advantage to the appellant insurance company as ultimately the money has to be paid from the public exchequer. On this ground also, I do not find any force in the above submission of counsel for the appellant. With regard to the other contention raised by counsel for the appellant that at least the appellant is entitled to recovery rights, I find the same equally devoid of any merit. As per own case of the appellant the said driver was competent to drive LMV (Taxi) on the relevant date of the accident but was not competent to drive LMV (Commercial). This fact itself shows that the driver of the said Tempo was competent to drive LMV, although the nature of the vehicle which was being driven by him was of commercial nature. Once the driver was competent to drive LMV, be it commercial or taxi, such a breach on the part of the driver may call for some action as envisaged under the Motor Vehicles Act, but the same cannot defeat third party claims. In this regard in **National Insurance Co. Ltd. v. Swaran Singh,(2004) 3 SCC 297**, the Hon'ble Supreme Court observed as under:

“47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of

different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.”

The Apex Court in **Sohan Lal Passi Vs. P.Sesh Reddy & Ors., 1996 (5) SCC 21** has held that breach on the part of the owner should be so fundamental so as to entitle the insurance company to claim complete exoneration from its liability to pay the insurance amount. I do not consider the said violation on the part of the driver of the offending vehicle fundamental in nature. Even otherwise, the appellant has not placed on record copy of the policy so as to take the plea of violation of terms and conditions of the insurance policy by the owner of the offending vehicle.

The above mentioned judgments as relied upon by the counsel for the appellant are not applicable to the facts and circumstances of the present case.

Dismissed.

**February 20, 2008**  
**mg**

**KAILASH GAMBHIR J.**