

UNREPORTED

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

+ **FAO 315/2003**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

KUSUM AND ORS. Respondents
Through: None

% **Date of Decision : August 17, 2011**

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

1. The appellant in this appeal seeks to assail the judgment and award dated 03.01.2003 passed by the learned Motor Accidents Claims Tribunal, Shahdara, Delhi in Suit No.90/99.

2. The facts concisely stated are that the respondent No.1 filed a petition under Section 166 of the Motor Vehicles Act, 1988 for compensation against the driver, the owner and the insurer of the offending vehicle, viz. bus bearing No.DL-1P-5728, alleging therein that when she was in the process of alighting from the said bus from the front door, the driver (the respondent No.2) suddenly put the bus into motion with a jerk, as a result of which she (the respondent No.1) fell down and her right leg was crushed under the wheel of the bus.

3. On issuance of notice to the respondents No.2 and 3, the said respondents filed a written statement denying the involvement of their bus in the said accident. The appellant-Insurance Company, in its written statement, while admitting the insurance of the offending bus on the date of the accident, controverted the pleas raised in the Claim Petition and denied its liability to pay compensation to the injured-victim under the policy on the ground that the respondent No.2-driver

was not holding a valid and effective driving licence at the time of the accident. The learned Tribunal by its judgment and award, which is impugned in the present appeal, held the respondents No.2 and 3 and the appellant jointly and severally liable to pay to the respondent No.1 the sum of ₹ 1,51,850/- together with interest at the rate of 8% per annum from the date of the filing of the petition till realisation.

4. Arguments were addressed by Mr. Pankaj Seth on behalf of the appellant-Insurance Company. The respondents No.1, 2 and 3, though duly served, have chosen not to contest the appeal. Accordingly, this Court was left with no option except to hear the learned counsel for the appellant and to scrutinize the record with his assistance.

5. The short point urged by Mr. Pankaj Seth, learned counsel for the appellant, is that the learned Tribunal erroneously came to the conclusion that the appellant had failed to establish the violation of the insurance contract and, therefore, could not get out of its liability under the insurance contract to compensate the respondent No.1.

6. Mr. Seth has invited the attention of this Court to the insurance policy Ex.R3W-1/1 to submit that as per the relevant clause contained in the said policy, only the person holding a valid driving licence was entitled to drive the insured vehicle and since in the present case, the respondent No.2 was not holding a valid driving licence at the time of the accident, there was a clear cut violation of the insurance contract and, as such, the appellant could not be asked to indemnify the insured under the insurance contract by compensating the respondent No.1 for the injuries sustained by her.

7. Mr. Seth heavily relied upon the testimonies of the two witnesses examined by the appellant before the learned Tribunal, namely, R3W-1 Shikha Bose, Assistant Divisional Manager, who proved on record the computerized copy of the insurance policy of the offending bus as Ex.R3W-1/1 and the certified copies of the criminal record as Exhibits R3W-1/2 and R3W-1/3; and R3W-2 Shri Pranab Chaudhary, LDC, Transport Authority, Loni, Delhi, who was examined to prove that the respondent No.2-driver was not holding a valid driving licence at the time of the accident. Mr. Seth submitted

that the said witness from the Transport Authority, in his testimony, categorically stated that driving licence No.C-93050738, valid upto 19.05.1996, was issued by the Transport Authority, Loni Road in favour of one A.K. Khanna, son of Shri Gyanender Singh Khanna and as per the procedure of the said Authority, no other licence could have been issued with a similar licence number in favour of any other person. It was further stated by the said witness that though there are nine Transport Authorities functioning in Delhi, there cannot be a common driving licence number in relation to driving licences issued from the various Transport Authorities functioning in Delhi. Thus, the learned counsel contends that the aforesaid driving licence could not have been issued in favour of the respondent No.2, Balam Singh.

8. A look now at the findings of the learned Tribunal as regards the aforesaid defence of the Insurance Company, which are as follows:

“28. In order to succeed in this argument respondent No.3 is also required to show that Balam Singh produced aforesaid driving licence No.C-93050738 issued by transport authority Loni Road before the insurance company or the investigating authority. In this

regard, respondent No.3 has not led any evidence except certified copy of one seizure memo relating to case FIR No.356/97 P.S. Shakarpur indicating that Balam Singh produced one driving licence No. C-93050738 valid from 29.9.99 before the Investigating Officer of the aforesaid case. If we go through this seizure memo, it do not disclose from which transport authority aforesaid driving licence No. 93050738 in favour of Balam Singh was issued. Since aforesaid connecting evidence is lacking, it cannot be concluded that the aforesaid seized driving licence of Balam Singh was purportedly issued by the transport authority Loni Road. Respondent No.3 could easily have summoned the record of aforesaid criminal trial to prove the driving licence of Balam Singh or its copy which could have settled this controversy. Since respondent No.3 has failed to deny said connecting evidence, in my opinion, he has failed to discharge his onus to prove that Balam Singh was not holding a valid driving licence. Ld. counsel for respondent No.3 has now argued that every transport authority gives different numbers to the licences issued by them and the C series of driving licences relate to only Transport Authority Loni, Delhi. However, there is no cogent evidence to substantiate this argument. Therefore, I do not find any merit in this contention. In view of my discussion above, I am of the opinion that respondent No.3 has failed to establish that respondent No.1 was no holding a valid driving licence. Since respondent No.3 has failed to prove the violation of insurance contract, he obviously

cannot get out of his liability under insurance contract to compensate the petitioner. Accordingly, I hold that respondent No.3 is also liable to compensate the petitioner.”

9. At this juncture, it needs to be mentioned that R3W1 proved on record certified copy of list of witnesses in case FIR No. 545/98 as Exhibit R3W1/2 and certified copy of seizure memo of case FIR No. 356/97 as Exhibit R3W1/3. A perusal of the record reveals that the FIR pertaining to the present case, as borne out from the Claim Petition, is FIR bearing No.545/98 registered at the Police Station Krishna Nagar. There is also on record a verification report dated 11.12.2001 of the FIR No.356/97, Police Station Shakarpur, according to which the said FIR does not pertain to the present accident case registered under Sections 279/337 I.P.C. nor does it pertain to Balam Singh, the driver of the alleged offending vehicle. Subsequent to the filing of the said verification report, as per the record, the appellant filed an application under Order XVIII Rule 17 CPC dated 08.03.2002 seeking permission to lead additional evidence to prove its defence that the respondent No.2 did not hold a valid and

effective driving licence on the date of the accident. The said application was allowed by the learned Tribunal vide its order dated 12.04.2002, which is reproduced hereunder:

“12.4.2002

Present: Shri Dhiraj Kulshresth Counsel for the petrs.

Ms. Nupur Boss Adv. for R.3.

R.1 and 2 are already exparte.

Arguments on application of R.3 for additional evidence heard. It is submitted by Ld. Counsel for R.3 that due to inadvertence and confusion R.3 instead of leading evidence in respect of the driving licence of R.1 has led evidence in respect of some other D/L particulars of which were inadvertently obtained from the record of criminal trial of some other case. Counsel for the petitioner has no objection if R.3 is permitted to lead evidence subject to cost. Considering the fact that application has been moved at a highly belated stage and the concession given at the bar in the interest of justice, case is adjourned to payment of cost of Rs.5000/-. Only one adjournment shall be granted to R.3 to conclude his evidence. Put up on 9.8.2002 for R.E. as well as for payment of cost.”

10. Thereafter on 09.08.2002, the learned counsel for the appellant placed on record the final report, the list of witnesses and FIR pertaining to case FIR No.356/97 exhibited as RX1 to RX3 respectively and closed its evidence. Nothing further was placed on record. No connection whatsoever is borne out between the case FIR No.545/98 and case FIR No.356/97 from the records.

11. In view of the aforesaid, the reliance placed by the learned counsel for the appellant on the seizure memo pertaining to case FIR No.356/97, P.S. Shakarpur exhibited as Ex.R3W-1/3, which mentions the licence No. C 93050738 and consequently upon the testimony of R3W2, who proved on record that the said licence No. C 93050738 was issued to one Mr. A.K. Khanna son of Sh. Gyanender Khanna and not to respondent No.2, Balam Singh, is misplaced.

12. It is also noteworthy that the appellant, on being allowed by the Claims Tribunal to lead additional evidence, failed to place on record any document relevant for the purpose of the present case.

13. The inevitable conclusion, thus, is that it must be held that the appellant has failed to prove that the driver of the offending vehicle

was not holding a valid and effective driving licence at the time of the accident. Accordingly, the appeal fails and is dismissed.

14. There will be no order as to costs.

15. The records of the learned Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

August 17, 2011
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