

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

Reserved on: 17th October, 2011

Pronounced on: 8th December, 2011

+ **MAC APP. 357/2008**

PRIDE CONSTRUCTIONS Appellant

Through: Mr. B. M. Sehgal, Adv.

Versus

MRS. SUHAS DATTAR AND ORS. Respondents

Through: Mr. A. K. Soni, Adv. for Respondent
No.6.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant M/s. Pride Constructions impugns the award dated 28.11.2007 passed by the MACT (Tribunal) whereby a compensation of ₹ 13,50,000/- was awarded in favour of Respondents No.1, 2 & 3; the Respondent No.6 Oriental Insurance Co. Ltd. was granted the right to recover the compensation from the Appellant being registered owner of the vehicle as the driving license possessed by the driver of the offending vehicle was fake.
2. On 24.09.1997 at about 12:05 A.M. the deceased Dr. V. G. Dattar an ENT Specialist was driving his car No.DL-1CD-1541.

When he reached opposite Gate No.1 Subrato Park, he hit a stationary Truck No.DL-1G-5454, which was parked 4 ft. away from the footpath without any indicator. The injuries suffered by Dr. Dattar proved fatal and he succumbed to the injuries on the same night.

3. The quantum of compensation awarded is not disputed before this Court. The Appellant's grievance is that it had sold Truck No.DL-1G-5454 to Respondent No.5 on 22.04.1996 i.e. much prior to the accident, which took place on 24.09.1997. Respondent No.5 being the rightful owner was liable to pay the compensation and Oriental Insurance Co. Ltd. being the insurer was under obligation to pay the compensation to indemnify the owner.
4. It is urged that Respondent No.5 did not dispute the ownership of the Truck in his written statement filed before the Tribunal. It was only during evidence that Respondent No.5 took the stand that he was merely an employee with the Appellant. It is, thus, urged that the Appellant was completely liable to be absolved.
5. I have heard Mr. B. M. Sehgal, Advocate on behalf of Appellant, Mr. A. K. Soni, Advocate on behalf of Respondent No.6 and have perused the record.
6. In the claim petition Dinesh Kumar (Respondent No.5 herein) was impleaded as Respondent No.2 being the owner of Truck

No.DL-1G-5454, which was the offending vehicle. In para 15 of the claim petition, it was averred that Dinesh Kumar was owner of the vehicle. In the written statement filed by the Appellant, he (Respondent No.4 before the Tribunal) took the plea that he had already sold the offending Truck to Dinesh Kumar Respondent No.2 on 22.04.1996. Respondent No.5 in reply to para 15 of the claim petition did not controvert the Claimant's allegation regarding the ownership of the Truck either specifically or by necessary implication. Not only this, Respondent No.5 (Dinesh Kumar) also filed an affidavit and an undertaking before the Criminal Court stating that he was the rightful owner of Truck No.DL-1G-5454, which was allegedly involved in case FIR No.426/97 under Section 279/ 304A IPC. Thus, Respondent No.5's plea during evidence that he was merely an employee of M/s. Pride Construction and had nothing to do with the ownership of the Truck No.DL-1G-5454 ought not to have been accepted by the Tribunal. Moreover, Devender Kumar's (R3W1) testimony that Truck No.DL-1G-5454 was sold to Dinesh Kumar on 22.04.1996 was not challenged in cross-examination by Respondent No.5 (Respondent No.2 before the Tribunal). Thus, there is no escape from the conclusion that the Respondent No.5 (Dinesh Kumar) was the rightful owner of the offending Truck.

7. In the case of *Dr. T. V. Jose v. Chako P.M. @ Thankachan and Ors.*, (2001) 8 SCC 748, which was followed in *Pushpa @*

Leela & Ors. v. Shakuntala & Ors., (2011) 2 SCC 240 it was held that the registered owner cannot escape the liability as far as the third party is concerned. Thus, the Appellant and the Respondent No.5 both were liable to pay compensation to Respondents No.1 to 3.

8. The question for consideration is whether the owner committed willful breach of terms of the policy. The Insurance Co. proved the Insurance Policy Ex. REW2/1 and report of the Investigator Ex. R3W2/5 to the effect that the driving licence of Jitender Kumar (Respondent No.4 herein) was fake. The Insurance Co. examined R3W2 Ms. Harsh Nangia, who testified that a notice under Order XII Rule 8 CPC was issued to Respondents No.1, 2 & 4 (the Tribunal, the rightful owner and the registered owner respectively). Copy of the notice was proved as Ex. R3W1/1 and postal receipts as Ex. R3W2/224. Her testimony was not challenged in cross-examination. The driver, the rightful owner and the registered owner (Respondents No.4, 5 and the Appellant herein) failed to produce the driving licence of the driver. The driving licence No.J6418/94 was produced by the Claimants. The Insurance Company examined R3W3 Rakesh Kumar licence Clerk (Civil-cum-Licencing Authority, Gurgaon) and R3W4 Manish Kumar, Licencing Clerk (RATA-cum-SDO Civil, Gurgaon) to the effect that DL No.J6418/94 was not issued by RTA, Gurgaon. This evidence was not challenged before the Tribunal and thus it was rightly concluded by the

Tribunal that the driving licence held by Respondent No.4 (herein) was fake. During inquiry before the Tribunal Respondent No.5 entered the witness box as R2W1. He deposed that in the year 1996, he was employed by M/s. Pride Construction Co. to look after the offending vehicle. He took the driving test of the driver Jitender Mishra and also saw his driving licence. He deposed that the driver represented to him that the driving licence was genuine. I have already held earlier that on the date of the accident Dinesh Kumar had already purchased Truck No.DL-1G-5454. Thus, his testimony that he took the test to satisfy himself about the driving skill of the driver being an employee of the Appellant (M/s. Pride Construction) is not believable. In fact, there was no evidence that after purchase of the offending vehicle by the Respondent No.5, he appointed Jitender Mishra (Respondent No.4) as the driver of the vehicle and if ever satisfied himself that he possessed a valid driving licence. The initial onus is on the Insurance Co. to prove that there was willful breach of terms of the policy. In *United India Insurance Co. Ltd. v. Lehu and Ors.*, (2003) 3 SCC 338 while relying on *Skandia Insurance Co. Ltd. v. Kokilaben Chandravan and Ors.*, (1987) 2 SCC 654 and *Sohan Lal Passi v. P. Sesh Reddy & Ors.*, (1996) 5 SCC 21 the Supreme Court held as under: -

*“18. Now let us consider Section 149(2).
Reliance has been placed on Section 149(2)(a)(ii).
As seen, in order to avoid liability under this*

*provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. **The insurance company must establish that the breach was on the part of the insured.**"*

9. The Insurance Co. did everything to prove the willful breach of the policy by the insured. The insured had transferred the

vehicle in favour of Respondent No.5 though he denied to be a transferee. The Appellant did not lead any evidence as to who was the driver of the offending vehicle at the time of accident and if he had any valid driving licence. In fact, in view of the stand taken by the Appellant that it transferred the vehicle in favour of Respondent No.5 on 22.04.1996 (which it successfully proved), it could not have taken the plea that the offending vehicle at the time of accident was being driven by a duly licensed person. Respondent No.5 took a contrary plea to the Appellant that it continued to be the owner and he was merely an employee, which he was unable to establish. Rather as stated earlier he tried to set up a case that he took the driving test of the driver being an employee of the Appellant, which has to be rejected for the reason that he was the rightful owner on the date of the accident.

10. In view of the above discussion, the Insurance Co. has been able to establish that there was willful breach of the terms of the policy by the insured; the Tribunal rightly fastened the liability on the Appellant to reimburse the amount paid by the Respondent No.6 Insurance Co.
11. The Insurance Co. was under obligation to satisfy the award against the third person. Since there was no privity of contract between Respondent No.6 Oriental Insurance Co. Ltd. and Respondent No.5 Dinesh Kumar, the rightful owner. It would have a right of recovery against the Appellant M/s. Pride

Construction. Since, the rightful owner is also a party to the proceedings, the Appellant would be entitled to recover the amount in turn from Respondent No.5 on the basis of the ratio in *Dr. T. V. Jose v. Chako P.M. @ Thankachan and Ors.*, (2001) 8 SCC 748. In a latest judgment of Punjab & Haryana High Court in *Tejinder Singh v. Amarjit Kaur*, FAO No.3475/2011 decided on 09.05.2011 relying on *Dr. T. V. Jose* (supra) it was held that since subsequent purchaser was a party to the proceedings, in the event of recovery made by the Claimants against the registered owner, the registered owner would be entitled to recover the amount paid from the subsequent purchaser in the very same execution proceedings. In this case too the Appellant need not file an independent suit for recovery and would be entitled to recover the amount from Respondent No.5, if the same is recovered from it by Respondent No.6 the Oriental Insurance Co. Ltd.

12. The appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

DECEMBER 8, 2011

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