

UNREPORTED

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

+ MAC.APP. 587/2007

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr.Manoj R.Sinha, Advocate.

versus

SHRI AVNISH KUMAR & ORS. Respondents
Through: None for the respondent No.1
Mr.Dhruv Kumra for the
Respondent Nos.2 & 3

% Date of Decision : January 18, 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

: REVA KHETRAPAL, J.

This appeal is directed against the award dated 08.08.2007 passed by the learned Motor Accident Claims Tribunal whereby and whereunder the appellant Insurance Company has been held liable to

pay compensation to the respondent No.1 in the sum of ₹ 78,692/- along with interest @ 7.5% p.a.

2. Briefly delineated the facts are that the respondent No.1 received injuries in a road accident while travelling as a passenger in TSR bearing No.DL1R-F3281 being driven rashly and negligently and at a high speed by the driver, the respondent No.2 herein. The respondent No.1 filed a claim petition under Section 166 of the Motor Vehicles Act for award of compensation to the tune of ₹ 2.5 lacs. During the course of proceedings before the Tribunal, it was established beyond doubt that the vehicle was being driven by the respondent No.2 driver rashly and negligently. It was also established beyond doubt that the respondent No.2 driver was having a driving licence entitling him to drive a motor cycle and LMV(NT) only.

3. The sole contention of the learned counsel for the appellant Insurance Company, Mr.Manoj R.Sinha is that the learned Tribunal erred in fastening the liability of the award amount on the appellant Insurance Company. Mr.Sinha contended that where the driver of the

offending vehicle is driving such class of vehicle for which he is not authorised, the insurer is to be completely exonerated of all liability. In the instant case, he contended that the respondent No.2 was driving a TSR-autorickshaw, which was a commercial vehicle, and he had a driving licence for a light motor vehicle only and as such, the appellant Insurance Company was not at all liable to indemnify the insurer.

4. Reliance was placed by the learned counsel for the appellant, in the above context, upon the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Kusum Rai & Ors., 2006 (4) SCC 450*. In the said case, the death of a minor girl was caused by a jeep, which was admittedly being used as a taxi and thus as a commercial vehicle. The person who was driving the said vehicle at the time of the accident had a driving licence for driving a light motor vehicle. In such circumstances, the Supreme Court held:

“ It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of

a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.

It further held :

“This Court in *Swaran Singh* clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in *Swaran Singh* stating: (SCC pp.336-37, para 89)

“89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods

vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

5. The Supreme Court in the aforesaid case concluded that the appellant in the said case was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was

in error in holding otherwise. However, keeping in view the fact that the owner had not appeared, that the victim was aged only 12 years and that the claimants were from a poor background and must have suffered great mental agony, the Court expressed the opinion that it may not be appropriate to push them into another round of litigation, particularly when it may be difficult for them to secure the presence of owner of the vehicle and, therefore, declined to interfere with the impugned award in the peculiar facts and circumstances of the case. The appellant was, however, enabled by a direction issued by the Supreme Court in exercise of its jurisdiction under Article 136 of the Constitution to recover the amount from the owner in the same manner, as was directed by the Supreme Court in the case of ***Oriental Insurance Company Vs. Nanjappan & Ors., 2004 (13) SCC 224.***

6. In ***Nanjappan's case***, the Supreme Court opined (***SCC p-226 para 8***):

“Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in ***Baljit Kaur case*** that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering

the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.”

7. In the present case as stated above, there is no manner of doubt that the driving licence of the driver of the offending TSR-autorickshaw was valid for driving motorcycle and light motor vehicle (non-transport). R3W1 Dal Chand, who appeared from the Loni Transport Authority, Government of NCT of Delhi unequivocally stated that the driving licence of Rajiv Kumar, son of Ashok Kumar, PO50 12004251560-Exhibit R3W1/1, was issued by the Loni

Transport Authority on 23.01.2004 and was valid till 22.01.2024 for driving motorcycle and light motor vehicle (non-transport). In view of this position, clearly, the respondent No.2 Rajiv Kumar was not authorised to drive a TSR, which is a commercial vehicle and does not fall in the category of light motor vehicle (non-transport). It was possibly for this reason that the respondent No.2 could not control the vehicle and it overturned, causing grievous injuries to the respondent No.1. The respondent No.2, who appeared in the witness box as R1W1 and his mother Smt.Ram Kali, who appeared in the witness box as R2W1, made a half hearted attempt to prove that no accident with the respondent No.1 had taken place and were rightly disbelieved by the Tribunal in view of the inconsistent statements made by both the said witnesses.

8. In view of the aforesaid and also keeping in view the law laid down by the Hon'ble Supreme Court in ***Kusum Rai's case (supra)***, I have no hesitation in holding that the Insurance Company must be exonerated from all liability as the driving licence of the offending vehicle was not valid for driving the vehicle which caused the

accident. However, in view of the fact that by an earlier order passed by my learned predecessor, 50% of the award amount has been deposited by the Insurance Company, which was directed to be released to the respondent No.1 claimant while the balance 50% of the award amount along with interest thereon is kept in a fixed deposit in the name of the respondent No.1 for a period of three years, the Insurance Company is given the right to recover the amount from the driver and owner of the offending vehicle, the respondent Nos.2 and 3 herein, in accordance with the judgment of the Supreme Court in *Nanjappan's case (supra)*.

The appeal stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

January 18, 2010
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