

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

Date of decision: 31st August, 2012

+ **MAC APP. 32/2010**

ANIT PAL

..... Appellant

Through: Mr. Ashish Middha, Adv.

versus

FUDEES MANDAL & ORS.

..... Respondents

Through: Ms. Majusha Wadhwa, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This Appellant impugns a judgment dated 05.07.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹7,08,000/- in favour of the First Respondent, the Respondent No.4 Oriental Insurance Company Limited was granted recovery rights on the premise that the driving licence held by the Respondent No.3 Amjad Ali, the driver of the offending vehicle was not valid to drive the offending vehicle.
2. In the Appeal it is stated that Respondent No.3 Amjad Ali had produced the driving licence No.1559/OR/RPR/2002 (Old driving licence No.2884/TPT/MBD/2000) which was valid to drive LMV transport and an endorsement was made on the driving licence to drive a transport vehicle w.e.f. 29.11.2003 which was valid upto 28.11.2006 (renewed

subsequently also). The Respondent No.3 Amjad Ali produced only that licence to the Appellant. An Affidavit to this effect was filed by the Appellant in the Appeal. A verification report from the Motor Licensing officer, Rampur, U.P. was also filed along with the Appeal.

3. The Respondent Insurance Company was directed to verify the genuineness of the verification report and letter dated 23.09.2010 along with the verification Report in Form 54 was also produced. The report shows that the Respondent No.3 Amjad Ali possessed a valid driving licence No.2884/TPT/2000 to drive LMV (T) and the driving licence was valid from 29.11.2000 to 28.11.2003. The report further shows that an endorsement to drive a transport vehicle was made w.e.f. 29.05.2002. The licence was renewed from 29.11.2003 to 28.11.2006 and then from 23.05.2007 to 22.05.2010.
4. It is urged by the learned counsel for the Appellant that Rule 15 of the Central Motor Vehicles Rules, 1989 (the Rules) lays down that no person shall be permitted to take a test to obtain a driving licence unless he has held a learner's licence for a period of at least 30 days. After taking a test as provided under Section 9(3) of the Act, a person can be issued a driving licence in respect of the type of vehicle to which the application relates.
5. The learned counsel for the Respondent Insurance Company drew my attention to Form 4, Form 5 and Form 8 appended to the Rules which prescribe the form of application to obtain a licence to drive motor vehicle; a certificate of training required to be issued by a driving school/establishment and an application for the addition of a new class of vehicle to the driving licence.

6. The learned counsel for the Respondent Insurance Company argues that the verification report nowhere provides that the driver possessed the driving licence to drive a Heavy Passenger Vehicle as defined under Section 2 (17) of the Act. It is urged that as per Section 6 of the Act, a person is entitled to hold only one driving licence except the learner's licence or a driving licence issued in accordance with the provision of Section 18 of the Act or a document authorizing a person to drive motor vehicle in accordance with the Rules made under Section 139 of the Act. Thus, even if, it is assumed that a second licence was possessed by the Respondent No.3, the same was of no consequence. Reliance is placed on a judgment of the Punjab & Haryana High Court in *Bharat Kharbanda v. National Insurance Co. Ltd. & Ors.*, 2010 ACJ 1701 wherein it was held that sub-section (i) of Section 6 of the Act strictly prohibits holding of two licences.
7. There is no dispute about the provision of the Motor Vehicles Rules that a person must possess a valid driving licence for the class of vehicle which is found to be involved in the accident.
8. In the instant case two letters dated 23.09.2010 and one report in Form 54 has been placed on record by the Respondent Insurance Company. One letter shows that the third Respondent was issued a licence to drive LMV (T) on 29.11.2010. The licence was valid upto 28.11.2003. The second letter shows that an endorsement to drive TV (transport vehicle) was made w.e.f. 29.05.2002 and the licence was renewed from 29.11.2003 to 28.11.2006. The accident occurred on 18.10.2005. Section 10 of the Act lays down the different classes of licence which can be issued to a person

applying for a driving licence. Section 10 of the Act is extracted hereunder:-

“10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;*
- (b) motor cycle with gear;*
- (c) invalid carriage;*
- (d) light motor vehicle;*
- (e) transport vehicle;*
- (i) road-roller;*
- (j) motor vehicle of a specified description.”*

9. Thus, it will be seen that Clause (e) to Sub-Section (2) was substituted w.e.f. 14.11.1994 whereby a category of transport vehicle was substituted in place of medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle & heavy passenger motor vehicle.
10. As has been pointed out hereinabove, the third Respondent already possessed a driving licence to drive LMV (Transport) which was valid from 29.11.2000 to 28.11.2003. If Respondent No.3 was not empowered to drive a Heavy Transport Vehicle by virtue of endorsement w.e.f. 29.05.2002, then there was no purpose of making the endorsement. The endorsement entitled Respondent No.3 to drive a Light Motor Vehicle, as well as a Heavy Motor Vehicle which included a Heavy Passenger Motor

Vehicle. Thus, I have no manner of doubt that the driving licence, whose verification report has been produced by the Appellant, entitled the third Respondent to drive the vehicle involved in the accident.

11. Coming to the contention that a person is not entitled to hold two driving licences at the same time, it may be stated that the Court is to see whether there is a willful and conscious breach of the terms of the policy on the part of the insured.
12. The Appellant has filed an Affidavit that the driving licence No.1559/OR/RPR/2002 (old driving licence No.2884/TPT/2000) was produced by the driver (Respondent No.3) before him at the time he employed him.
13. In *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 it was held by the Hon'ble Supreme court that mere absence, fake or an invalid driving licence or disqualification of the driver for driving a vehicle at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in fulfilling the condition of the policy regarding use of the vehicle by a duly licensed driver or by one who was not disqualified to drive at the relevant time. It was observed that Insurer must establish a willful violation of breach of policy condition. In *United India Insurance Co. Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338, it was held that if at the time of hiring a driver the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has, in fact, been issued by the competent authority or not.

14. Thus, it cannot be said that there was willful breach of the terms of the policy on the part of Insured.
15. The facts of *Bharat Kharbanda* relied on by the learned counsel for the Respondent Insurance Company are clearly distinguishable and are not attracted to the facts of the instant case.
16. In view of the fact that Respondent no.3 possessed a valid driving licence which was shown by him to the Appellant, the Appellant cannot be said to have committed breach of the terms of policy. The Appeal, therefore, has to be allowed. I order accordingly and set aside the impugned judgment so far as it grants recovery rights against the Appellant.
17. The Appeal is allowed in above terms.
18. The statutory amount and the compensation amount, if any, deposited by the Appellant along with interest, if any, accrued during the pendency of the Appeal, shall be refunded to the Appellant.
19. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 31, 2012
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