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

Date of Decision: 21st November, 2012

+ **MAC. APP. 198/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through Mr. Mohan Babu Aggarwal with Mr.
Harkesh Chand Aggarwal, Advocates

versus

RISHI PRATAP SINGH & ORS. Respondents
Through Ms. Amita Gupta, Advocate for the
Respondent No.3

+ **MAC. APP. 278/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through Mr. Mohan Babu Aggarwal with Mr.
Harkesh Chand Aggarwal, Advocates

versus

VINITA SINGH & ORS. Respondents
Through Ms. Amita Gupta, Advocate for the
Respondent No.3

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC.APP.198/2011 and MAC.APP.278/2011) arise out of a common judgment dated 29.11.2010 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹20,000/- and ₹1,59,656/- respectively was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 12.01.2007.
2. The only ground of challenge raised by the Appellant Insurance Company is that it appointed an Investigator who found the driving licence held by Respondent No.2 (Sompal), driver of the offending vehicle to be fake. An information in this respect was given to the police. A notice under Order XII Rule 8 CPC was also served upon the owner and the driver. Thus, the Appellant did whatever was in its power and was entitled to recovery rights against the owner and the driver.
3. It is no longer *res integra* that initial onus is on the insurer to prove that there is willful breach of the terms and conditions of policy. In *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; the three Judge Bench decision of the Supreme Court while referring to Section 96 (2) (b) (ii) of the Motor Vehicles Act, 1939(which is in parimateria with Section 149(2) of the Motor Vehicles Act, 1988) held that this Section cannot be interpreted in a technical manner. Section 96 (2) (b) (ii) only enables the Insurance Company to defend the liability to pay the compensation on the grounds mentioned in sub-section (2) including that there has been a contravention

of the condition excluding the vehicle being driven by any person who is not duly licensed. It was held that if the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. The Supreme Court held that the insurer has to satisfy the Tribunal that such violation or infringement on the part of the insured was willful. The relevant part of the report is extracted hereunder:-

“12. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression ‘breach’ occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance

company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act.....”

4. Similarly, in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, the Supreme Court observed that in order to avoid its liability it is not sufficient for insurer to show that the person driving at the time of the accident was not duly licensed but it must further be established that there was breach on the part of the insured.
5. Turning to the facts of the instant case, the Appellant Insurance Company relies on Sarvesh Garg's(R3W2) testimony to prove that the driving licence held by the driver was fake. R3W2's testimony is extracted hereunder:

“I was appointed as Investigator by National Insurance Co. to verify the Driving Licence alleged to have been issued in the

name of Respondent No.1 Sompal from Licensing Authority, Dehradun. Certified copy of the Driving Licence of Sompal which was obtained from the criminal record is Ex.R3W2/A, I had applied with the concerned Licencing Authority for verification of this Driving Licence, the receipt of payment of inspection fees is Ex.R3W2/B. Report from the concerned Licencing Authority with respect to the Driving Licence is Ex.R3W2/C. On the basis of said report and finding that no such licence was issued by the Licencing Authority, Dehradun, I had submitted my report with the Insurance Co. which is Ex.R3W2/D and the same bears my signatures.

xxxx by counsel for the Petitioner

Nil. Opp. Given.”

6. I have before me the Trial Court record. The report Ex.R3W2/C which is purported to be proved by R3W2 a photocopy which bears the stamp of the Licencing Authority, M.V. Deptt, Dehradun(Uttarakhand). It does not bear signatures of any officer/official.
7. Section 67 of the Indian Evidence Act, 1872 (the Evidence Act) lays down the mode of proof of a document, which is extracted hereunder:-

“67. Proof of signature and handwriting of person alleged to have signed or written document produced -

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing.”

8. Thus, any document including a public document has to be proved as provide under Section 67 of the Evidence Act.

9. The question of proof of a Sanction Order signed by the Sanctioning Authority i.e. Secretary (Medical) Delhi Administration came up before a learned Single Judge of this Court in *State (Delhi Administration) v. Brij Mohan*, 27 (1985) DLT 322 where it was held as under:-

“(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it

requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act).....”

10. The question of proof of a public document came up before Bombay High Court in *C.H. Shah v. S.S. Malpathak & Ors.*, AIR 1973 Bom. 14, where it was held as under:-

“4..... In all cases of secondary evidence under Section 65 read with Section 63 of the Evidence Act when a copy or an oral account of a document is admitted as secondary evidence, the execution of the original is not required to be proved but if the original itself is sought to be tendered it must be duly proved and there is no reason for applying a different rule to public documents. Secondly, in the case of a certified copy, before a presumption of its genuineness can be raised under Section 79, as laid down by the Supreme Court in Bhinka's case already referred to above it must be shown that the certified copy was executed substantially in the form and in the manner provided by law. There would, therefore, be a check or safeguard in so far as the officer certifying it in the manner required by law would have to satisfy himself in regard to the authenticity of the original and in regard to the accuracy of the copy which he certifies to be a true copy thereof. On the other hand if the original of a public document is to be admitted in evidence without proof of its genuineness, there would be no check whatever either by way of scrutiny or examination of that document by an officer or by the Court. The

third and perhaps the most important reason, for not accepting Mr.Shah's argument on the point which I am now considering is that neither Section 67 nor Section 68 of the Evidence Act which lay down that the signature and the handwriting on a document must be duly proved do not make any exception in the case of public documents. In view of the provisions of the said section all documents whatever be their nature must be therefore be proved in the manner provided by Section 45, 47 or 73 of the Evidence Act.....

5. The only question which remains for consideration is whether a presumption of the genuineness of the original of a public document should be drawn by reason of Illustration (e) to Section 114 of the Evidence Act to the effect that official acts have been regularly performed. It is no doubt true that it has been held by a Division Bench of this Court in the case of East India Trading Co. v. Badat & Co., AIR 1959 Bom. 414 that Section 114 of the Evidence Act is wide enough to permit the Court to raise a presumption not only with regard to oral evidence, but also with regard to documentary evidence. It may be mentioned that the decision of the Division Bench in the said case was reversed on appeal by the Supreme Court by a majority AIR 1964 SC 538, but in the judgment of the majority the Supreme Court has not referred to the point mentioned above. Apart from the undesirability of taking a view which would let in any and every document tendered by Government in suits to which it is a party without proof of genuineness, in my opinion, no presumption under Section 114 can be drawn in view of the mandatory and unqualified term of Sections 67 and 68 of the Evidence Act. Section 114 which to put it in popular language, merely empowers the Court to use its commonsense, cannot be used to contravene an express provision of the Act itself. I, therefore, hold that if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law.....”

11. Thus, the certificate purported to be issued by a Transport Authority could not be admitted into evidence unless signatures thereon were proved by examining a witness.
12. It is true that there are some difficulties in summoning the witnesses from the registering authorities. This aspect was taken into consideration while framing the Delhi Motor Accident Claims Tribunal Rules, 2008. Under Rule 7 it has been provided that the submission of report as per Form "D" (provided in the Rules) by the registering authority would be made admissible without any formal proof. Rule 7 is extracted as under:

*"7. **Presumption about reports-** The contents of reports submitted to the Claims Tribunal in Form "A" and Form "D" by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary."*
13. Since the report of the Transport Authority was not proved in accordance with law, the same is not admissible in evidence. It was, therefore, rightly excluded from the evidence. If the report is ignored, there is no material on record to show that the driving licence No. S-2864/D.DUN/84 held by the Respondent No.2 (Sompal) was fake. The Insurance Company was, therefore, rightly made liable to pay the compensation.
14. The Appellant failed to prove that the document Ex.R3W2/C was signed and issued by the competent authority. The said document, therefore,

does not carry any value. The Appellant Insurance Company has thus failed to discharge initial onus placed on it to prove that there was conscious and willful breach of the terms and conditions of the policy on the part of the insured. Applications for additional evidence (CM.APPL.4668/2011 in MAC.APP.198/2011 and CM.APPL.6308/2011 in MAC.APP.278/2011) were also moved by the Appellant to place on record some documents, that is, a letter written to the Police that the driving licence held by the driver was fake. Even if this document is considered, it does not prove that the owner committed a willful breach of the terms and conditions of the policy. The Appellant was, therefore, rightly declined the recovery rights.

15. Consequently, the Appeals and the pending Applications are dismissed.
16. The amount of compensation deposited in the respective Appeals shall be released in favour of the First Respondent (Claimant).
17. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

NOVEMBER 21, 2012

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