

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

Date of decision: 29th November, 2012

+ **MAC.APP. 244/2010**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Vivek Singh, Adv. for
Ms. Neelam Singh, Adv.

versus

ANIL KUMAR & ORS. Respondents

Through: Mr. Dharmesh Kumar Proxy Counsel for
Mr. Sushil Kumar, Adv. for R-1/
Claimant.

+ **MAC.APP. 258/2010**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Vivek Singh, Adv. for
Ms. Neelam Singh, Adv.

versus

SUNIL KUMAR & ORS. Respondents

Through: Mr. Dharmesh Kumar Proxy Counsel for
Mr. Sushil Kumar, Adv. for R-1/
Claimant.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.7010/2010 (delay of 24 days) in MAC APP.244/2010

CM APPL.7467/2010 (delay of 90 days) in MAC APP.258/2010

1. Delay of 24 days and 90 days in filing the respective Appeals is condoned. The Applications are allowed.
2. The Appellant National Insurance Company Limited impugns a judgment dated 08.10.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹1,83,000/- and ₹36,900/- was awarded in favour of the First Respondents in the respective Appeals.
3. The following contentions are raised on behalf of the Appellant Insurance Company:-
 - (i) There was contributory negligence on the part of the injured as they were travelling in a goods vehicle.
 - (ii) The Appellant Insurance Company successfully proved the breach of the terms and conditions of the policy and was, therefore, entitled to recovery rights against the insured.

NEGLIGENCE

4. The First Respondents in both the Appeals appeared as their own witnesses (as PW-1) and deposed about the manner in which the accident took place. They testified that while travelling in Tata 407 No.HR-46A-8945 when they reached at the inter section of Sector 4 & 5 Dwarka, the offending truck No.HR-63-5015 came from the side of Rajapuri. It (the truck) was being driven by Respondent No.2 in a rash and negligent manner. It struck against Tata 407 with such a great force that their vehicle (Tata 407) turned turtle. There was no rebuttal to the testimony of the two injured. On the basis of FIR No.82/2005 registered at Police Station Dwarka, a report under Section 173 Cr.P.C. was also filed against

the Second Respondent, the driver of the offending truck. The Second Respondent did not come forward to give his version as to how the accident took place. Thus, the negligence for the purpose of a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) was sufficiently established. The finding reached by the Claims Tribunal cannot be faulted.

LIABILITY

5. It is urged by the learned Counsel for the Appellant Insurance Company that a notice under Order XII Rule 8 CPC was served upon the owner to produce the permit but the same was not produced. Thus, it is stated that the Appellant Insurance Company sufficiently proved the breach of the terms and conditions of the policy.
6. I have before me the Trial Court record. In the written statement filed by the Appellant a general and vague plea was taken that if it was proved that the person driving the offending vehicle at the time of the accident did not possess a valid and effective driving licence, the Appellant Insurance Company would not be liable to indemnify the insured. There was not even a whisper that the insured did not possess a valid permit to ply the offending vehicle.
7. This accident took place on 11.03.2005. The Appellant examined R2W1 on 30.04.2009 i.e. after four years of the accident to prove that a notice Ex.R2W1/B was served upon the insured to produce the original certificate of insurance and the permit of the vehicle valid as on 11.03.2005. Thus, in four years the insured was not informed that he was required to produce any permit before the Claims Tribunal. Even if,

service of such a notice is admitted, the Appellant had means to prove that there was conscious and willful breach of the terms and conditions of the policy. The Appellant could have summoned record from the concerned Transport Authority where the vehicle was registered to prove that the insured did not possess a valid permit on the date of the accident. That, however, was not done by the Appellant.

8. It is no longer *res integra* that the initial onus is on the insurer to prove that there is breach of the terms and conditions of the policy.
9. 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 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.....”

10. 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.

11. The Appellant has failed to prove that there was any breach of the terms and conditions of the policy.
12. The Appeals, therefore, have to fail; the same are accordingly dismissed.
13. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company in each case.
14. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 29, 2012

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