

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

Date of decision: 12th October, 2012

+ **MAC. APP. 255/2011**

FUTURE GENERAL INDIA INS. CO. LTD. Appellant
Through: Ms. Shantha Devi Raman, Adv.

versus

TSERING YOUDON & ORS. Respondents
Through Mr. Kumar Vikram, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Future General India Assurance Company Limited impugns a judgment dated 03.02.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹2,00,364/- in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 16.01.2010, the Appellant Insurance Company was made liable to pay the same and its plea of breach of the terms of policy was rejected.
2. There is twin challenge to the impugned judgment. First, it is stated that the accident was not caused by the Second Respondent. Second, since Respondent No.2 did not possess a valid driving licence, the Appellant was entitled to be exonerated. In any case, it was entitled to recover the compensation paid from the driver and the owner of the vehicle.

ACCIDENT AND THE NEGLIGENCE

3. It is urged by the learned counsel for the Appellant that the application of the First Respondent as to whether the driver was caught at the spot or not is contradictory. In her Affidavit Ex.PW-1/A, the Claimant as PW-1 testified that the driver of the offending vehicle stopped the vehicle, came to her and mentioned his name as Jitender Kumar. He was apprehended by the public and handed over to the police. In cross-examination, the Claimant deposed that the offending vehicle fled away from the spot and she became unconscious after the accident. It is pointed out that Respondent No.2 Jitender Kumar, who is claimed to be the driver of the offending vehicle No.DL-1LL-2136, that he himself filed his Affidavit Ex.RW1-/A testifying that he was working only as a helper on the truck and had left the employment a day before the accident. The driver was challaned for an offence punishable 3/181 of the Motor Vehicles Act, 1988 (the Act) which shows that the Respondent No.2 did not possess any driving licence.
4. The learned counsel urges that these facts taken together would raise an inference that the accident was not caused by Respondent No.2.
5. I am unable to be persuaded by the contention raised. I have before me the Trial Court record. An FIR with regard to the accident being No.8/2010 was recorded in the Police Station at 12:15 a.m. whereas the accident took place at 9:00 P.M. Thus, the police was able to reach the spot after the accident, remove the injured to the hospital, record her statement at 11:50 P.M. A rukka was sent to the Police Station and the FIR was recorded at 12:15 night. A perusal of the FIR shows that the driver of the offending vehicle No.DL-1LL-2136 was apprehended at the

spot. Thus, there could not have been any manipulation of production of the driver the next evening or his false implication. Respondent No.2's testimony as RW-1 does not inspire any confidence that he was not driving the offending vehicle at the time of the accident or that he was working only as a Cleaner. From the testimony of the First Respondent as PW-1 coupled with the prompt recording of the FIR, there is no doubt that the accident was caused on account of rash and negligent driving of the offending vehicle No.DL-1LL-2136 by the Second Respondent.

LIABILITY

6. The Claims Tribunal discussed the question of liability as under:-

“Respondent no. 3 has stated that respondent no. 1 was not possessed with a valid driving license. Statement of R3W1 official from Licensing Authority, Faridabad had been recorded as per which driving license produced by respondent no. 1 was found to be fake. Respondent no. 1 has stated that he did not have any driving license on the day of accident and had not produced any copy of the same either to investigator of respondent no. 3 or respondent no. 2. Respondent no.2 has produced the original driving license of respondent no. 1 and stated it was given to him at the time of Bail of respondent no. 1. In view of the findings of issue no. 1, respondent no. 1 was driving the offending vehicle at the time of accident in question.

Respondent no. 2 has stated that he had appointed respondent no. 1 as his driver after seeing his driving license and respondent no. 1 had assured him that his driving license was valid for driving the vehicle in question. In cross examination respondent no. 2 categorically stated that he himself had not been driving the offending vehicle because he did not have license for driving a commercial vehicle. Therefore, in view of the judgment of “National Insurance Co. Vs Swaran Singh & Ors.” (2004) (3) SCC 297 respondent no. 2 has discharged his onus to prove that he had appointed respondent no. 1 as his driver for driving the offending vehicle after taking necessary precautions and seeing his

driving license. Therefore, no recovery rights can be granted against respondent no. 2 in the present case.”

7. Respondent No.3, the owner of the offending vehicle filed his Affidavit as Ex.R2W1/A and entered the witness box as R2W1. He testified that he saw the original driving licence No.J-38988 dated 17.06.2008 at the time he(Respondent No.2) was engaged as a driver on the truck. He claimed that the said driving licence was obtained by him from the driver at the time of giving his surety. The Appellant Insurance Company tried to assail R2W1's testimony by giving a suggestion that he was not shown the driving licence by the Second Respondent at the time of appointment, but the same is not believable. The production of the driving licence itself shows that the same must have been seen by the third Respondent as claimed by him. The reasoning given by the Claims Tribunal that the Appellant Insurance Company failed to prove willful breach of the terms of policy is in consonance with the judgment of this Court in *New India Assurance Co. Ltd. v. Sanjay Kumar and Ors.*, ILR 2007(II) Delhi 733; and the judgments of the Supreme Court in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338; and *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297.
8. The Appeal is devoid of any merit; it is accordingly dismissed.
9. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
10. The compensation amount awarded shall be released in favour of the Claimant in terms of the order passed by the Claims Tribunal.

11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 12, 2012

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