

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

Date of decision: 11th December, 2012

+ **MAC.APP. 334/2010**

VED PARKASH

..... Appellant

Through: Mr.Vinay Kumar Singh, Advocate

versus

UNITED INDIA INSURANCE CO.LTD. & ORS..... Respondents

Through: Ms.Shivali Bansal, Advocate for
R-1 United India Insurance
Company

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Ved Parkash who is the owner of the offending Truck No.UP-14C-0136 impugns a judgment dated 26.05.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹ 3,60,000/- in favour of Respondents No.3 to 11. Respondent No.1 was granted recovery rights against the Appellant on the ground that the Appellant committed a breach of the terms and conditions of the policy by permitting the driver Ram Sudhar to drive the offending vehicle on the basis of the fake driving licence.
2. In fact, after passing the order dated 26.05.2003 an Application under Order IX Rule 13 CPC was moved by the Appellant. The order dated 26.05.21003 was suspended to the extent it granted

recovery rights against the Appellant and an inquiry was ordered to be held into question whether the Appellant committed a breach of the terms and conditions of policy by an order dated 07.01.2010. The Claims Tribunal held as under:-

“3. Subsequent to the aforesaid order one application was filed by R2 Ved Parkash owner of the vehicle u/O 9 Rule 13 CPC on 2.9.2006 upon which the Ld. Predecessor vide order dated 22.2.2007 allowed this application and observed that operative part of the award regarding the liability as dealt with by the aforesaid judgment dated 26.5.2003 stands suspended. Consequently the execution petition filed by the insurance company was also kept in abeyance subject to R2 giving security to the extend of 50% of the amount sought to be executed. R2 thereafter submitted the security by depositing a FDR of the State Bank of Patiala of Rs. 2 lacs alongwith security bond.

4. R2 owner of the vehicle has thereafter summoned the witness from the office of Transport Authority, New Delhi Zone, Delhi Govt., Delhi and also filed affidavit of driver of the offending vehicle and examined him as R2W2 and also filed affidavit of evidence and examined himself as R2W3. Insurance company summoned the witness from Licensing Authority, Mall Road.

5. It may be noted that driver of the offending vehicle had also appeared as RW1 in the course of the initial inquiry and was examined as such on 16.5.2001. His claim is that he was having a valid driving license on the date of accident on 21.1.95 (sic 21.06.95) which was submitted by him after expiry of the same at Transport Authority Faridabad while applying for renewal of license. While appearing as RW1 he has also produced on record his current license issued by Licensing Authority Faridabad photocopy of front side of which was Ex. RW1/A and backside of which was RW1/B. Backside of the driving license is relevant for the purpose of this order. It shows that it bears number as C94100285 (MR). In the course of the initial inquiry Insurance Company R3 had examined the witness from Transport Department Loni Road and according to the witness RW3 this driving license was issued at this number in the name of one Mohd. Inam S/o Abdul Mazid and photocopy of the record has been

produced by him as Ex.RW3/A. The report from Mall Road Authority was also submitted before the Ld. Predecessor proved as Mark C saying that number does not pertain to their authority.

6. On consideration of the entire evidence the Ld. Predecessor while passing the initial award dated 26.5.2003 was of the view that driver R1 was not having a valid driving license on the said date of accident. R2 was also proceeded ex parte after he had failed to appear.

7. In the application moved under Order 9 Rule 13 CPC by R2 owner the ground sought to be taken was that this driving license was issued to R1 from the office of MLO New Delhi Transport Authority. R2W1 Anil Kumar is the witness to the same effect who has been summoned by R2 from the office of Transport Authority New Delhi Zone. This witness has produced the particulars of driving license pertaining to R.S. Tiwari driver of the offending vehicle, duly certified by the Licensing Authority and same alongwith the card maintained in the office of Transport Authority New Delhi Zone Delhi Govt. have been proved by him as Ex. R2W1/A. In cross examination R2W1 states that he does not have any record to show the processing of issue of the card Ex. R2W1/A for the license issued to R1. Insurance Company on the other hand has summoned the witness from the office of Licensing Authority Mall Road Delhi and one Ramesh Kumar record keeper has been examined as such as R3W1. R3W1 has brought he (sic the) record of Driving License No. C94100285 but not the record of C94100285 (MR). However, witness says that he has come from Mall Road Authority and MR denotes to Mall Road Delhi. According to R3W1 Ramesh Kumar this Driving License as per their record was issued in the name of Jeet Singh S/o Munna Lal on 4.10.94 and was valid upto 3.10.97 for LMV and Motorcycle.

8. Having heard the counsels for the parties this Court is of the view that testimony of R2W1 that R1 R.S. Tiwari driver of the offending vehicle was having a valid driving license regarding the offending vehicle on the date of accident in the year 1995 issued by the Transport Authority New Delhi cannot be considered as sufficient for this purpose. R1 Anil Kumar has only produced the particulars of the driving license alongwith some card maintained in the office showing as having no.94100285 ND. However, as admitted by R2W1 himself that he had not brought any record to

show the processing of issue of the said card maintained in his office. The issuing of license is a matter of record. A proper record is maintained in the office of the Licensing Authorities as per the provisions of Delhi Motor Vehicle Act and Rules framed thereunder. The validity of driving license would presuppose the maintaining of the record for the same in the office. It may be noted that the driver while appearing as RW1 in the initial inquiry has taken up a plea that he has surrendered the driving license with him on the date of accident for the purpose of renewal of the license which was renewed by the Authority of Faridabad, copy of which has been proved by him as Ex.RW1/A. The backside of the same which is Ex.RW1/B was bearing the number of the earlier license surrendered by him as C94100285 (MR). This only goes on to show that there is a shifting in the stand of the driver from where he was having his license issued and was in possession on the date of accident. This makes difficult to believe the statement of driver on this point.”

3. On the basis of the above discussion, the Claims Tribunal opined that the record produced by R2W1 cannot be believed as other record was not available with the Transport Authority.
4. It is important to note that in the Application under Order IX Rule 13 CPC moved by the Appellant it was pleaded that the licence No.94100285 was issued by the MLO, New Delhi whereas the Respondent Insurance Company summoned the record from the MLO Mall Road.
5. The contention of Respondent Insurance Company is that on the basis of the driving licence Ex. RW1/A which was got renewed by Respondent No.2 Ram Sudhar (capital letters MR were written) which indicated that the licence was issued by Mall Road, Transport Authority. It has to be noted that the licence previously held by Respondent No.2, that is, driving licence which was valid

on the date of the accident summoned by the Respondent Insurance Company from the office of the Licencing Authority, Faridabad to find out the fact that the same was issued by the New Delhi, Licencing Authority or by Mall Road, Licencing Authority.

6. Since the Claims Tribunal opined that there appeared some forgery, it directed that an inquiry be conducted by the Secretary, Transport Department, Govt. of NCT of Delhi.
7. The Appellant herein moved an RTI Application inquiring about the status of the inquiry as ordered by the Claims Tribunal by order dated 07.01.2010, but he was not given any information.
8. During pendency of the Appeal, this Court also summoned the M.L.O. of Motor Licencing Authority, New Delhi as a Court witness along with the record of the Licence No.C94100285ND.
9. The Transport Department produced Mr.Mukesh Dayal, Inspector in the Office of Motor Licencing Authority, IP Depot, New Delhi Zone who stuck to his guns that the card Ex. R2W1/A was genuine which was retained by the Licencing Authority, New Delhi and that other record has been weeded out because of the passage of the time. A verification report dated 31.10.2007 was also submitted by the Licence Authority, New Delhi.
10. In the absence of any result of the inquiry and the fact that the Respondent Insurance Company did not prefer to summon the licence deposited by the Second Respondents at the time of obtaining renewal of the licence from the Faridabad, Licencing Authority in the year 1999. It would not be possible to hold that the

licence possessed by the driver and deposited with Licencing Authority, Faridabad was fake and that the Appellant committed a breach of the terms and conditions of policy.

11. In my view, the Respondent Insurance Company failed to prove any breach of the terms and conditions of policy on the part of the insured; the Appeal, therefore, has to be allowed. I order accordingly. Consequently, recovery rights granted against the Appellant are set aside.
12. The Appeal is allowed in above terms.
13. The statutory deposit of ₹ 25,000/-, if any, shall be refunded to the Appellant.
14. Pending Applications also stand disposed of.

(G.P. MITTAL)

JUDGE

DECEMBER 11, 2012

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