

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

Reserved on: 20th January, 2012

Pronounced on: 21st February, 2012

+ **MAC. APP. No.314/2010**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Kanwal Chaudhary,
Advocate

Versus

SURESH GUPTA & ORS Respondents
Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 14.12.2009 whereby a compensation of ₹62,364/- was awarded in favour of the First Respondent for having suffered injuries in an accident which took place on 31.10.2008. According to the case set up by the First Respondent, he suffered injuries on account of rash and negligent driving of a tanker bearing HR-46-5932 which was being driven by the Second Respondent and was owned by the

Third Respondent. The finding of negligence and the quantum of compensation is not disputed in the Appeal.

2. The only ground of challenge is that the offending vehicle did not have any permit to ply in the area of National Capital Territory of Delhi and thus the owner was guilty of breach of the terms of policy and could avoid liability to pay the compensation under Section 149(2)(a)(i)(b) Motor Vehicles Act.
3. An application under Section 151 CPC was moved by the Appellant before the Claims Tribunal which was dismissed by an order dated 12.12.2009. The Claims Tribunal held as under:

“Perusal of the file reveals that insurer, respondent No.3 was served with the summons of the claim petition on 09/04/09. Insurer was having ample time, manpower, financial power and opportunities to ascertain of any breach of any term or condition of the policy. The written statement was filed by respondent No.3 on 16/04/09 admitting the policy of the alleged offending vehicle as on the date of accident but nowhere in the written statement was there mention of any breach of any term or condition of the insurance policy by the insured in vivid and clear terms. Issues were framed on 11/05/09. Petitioner led his evidence on 06/10/09. The case was then fixed for 11/11/09 for respondent’s evidence and respondents were to take steps, if any, within a week thereof. No investigator report was filed by the insurer to show any breach of any term or condition of the policy by insured. No witness of the respondents was present on

11/11/09 nor was summoned. The request of the Ld. Counsel for respondent No.3 for adjournment on 11/11/09 was declined. Respondent's evidence was closed on 11/11/09. The case was fixed for final arguments on 02/12/09. On 02/12/09 arguments were addressed, inter alia by Ld. Counsel for respondent No.3 present. The insurer has not preferred any application for any amendment in the written statement. The case was fixed for orders on 14/12/09. Today one working day prior to the date fixed for orders, the Ld. Counsel for insurer has turned up with the above referred two applications and the file has been taken up.

In the case of National Insurance Co. Ltd. Vs. Swaran Singh reported in 2004(2) RCR (Civil) 114, it has been inter alia held that the breach of the policy condition that is disqualification of the driver or invalid driving license of the driver, has to be proved to have been committed by the insured for avoiding liability by the insurer. Even, mere absence, fake or invalid driving license for driving at the relevant time are not in themselves defences available to 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 the matter of fulfilling any condition of the policy regarding the use of vehicle.

After the arguments were heard and the judgment is to be pronounced, the Ld. Counsel for insurer has filed the abovesaid two application. Despite opportunities, the respondents have not led any evidence nor any investigator report had been filed. It is submitted that the driving license of the driver of the alleged offending vehicle has

yet not been verified by the officials of the insurer. This is an inquiry and not a trial. Purpose of formation of Tribunal is to award just compensation to the victims of road accident expeditiously. Towards that objective, every act and order of this Tribunal has been so as to expedite the inquiry and conclude it. All abovesaid elicits that insurer has not been diligent enough for ascertaining and bringing on record and prove the breach of any term or condition of the policy by insured in terms of law laid. The abovesaid two applications are lacking merits, not maintainable, so are accordingly dismissed with costs of Rs.2,000/- each.”

4. Along with the Appeal, an application was moved by the Appellant seeking leave of the Court to prove that the owner did not possess any permit to ply the vehicle in the State of NCT of Delhi. The application was allowed. The Appellant examined Mukesh Kumar, an official from RTO Faridabad, who deposed that permit No.539/H/07 was issued in respect of a vehicle HR-46-5932 on 03.07.2007 and was valid till 02.07.2010. AW2 Ram Avtar, an investigator proved his report Ex.AW2/1, which is extracted hereunder:

“Our representative got the State Permit of the insured vehicle bearing No.HR-46-5932 verified from RTO Faridabad, Haryana. As per verified report of permit the vehicle is authorized to ply in the State of Haryana. Hence found valid on the date of accident. The copy of Permit attached herewith.

Name of owner & address	Mr. Raj Kumar R/o Faridabad,
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	<i>Haryana</i>
<i>Vehicle No.</i>	<i>HR-46-5932</i>
<i>Permit No.</i>	<i>539/H/07</i>
<i>Valid from</i>	<i>3/07/2007</i>
<i>Valid up to</i>	<i>2/07/2010</i>
<i>Date of Accident</i>	<i>31/10/08</i>
<i>Name of Authority</i>	<i>Faridabad, Haryana”</i>

5. It is important to note that the owner of every vehicle is free to apply for temporary permit for plying a vehicle in any particular area from time to time. The Appellant did not issue any notice to the owner Mewa Devi(the Third Respondent) requiring her to produce the permit, if any, for plying in the State of Delhi. She was not summoned to appear as a witness to confront that she did not possess any permit to ply the vehicle in the State of Delhi. No evidence was brought to prove that the third Respondent did not possess any temporary permit on the day of the accident.

6. It is well-settled that the Insurance Company was under obligation to establish that the insured was guilty of willful infringement of the terms of the policy. (*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.

7. In the absence of requiring the owner to produce the permit, if any, for plying in the territory of NCT of Delhi or the circumstances under which the vehicle was found in Delhi, the Appellant has failed to establish that there was any willful breach of the terms of the policy. Thus, the Appellant cannot avoid the liability.
8. The Appeal is devoid of any merit; it is accordingly dismissed.
9. No costs.

(G.P. MITTAL)
JUDGE

FEBRUARY 21, 2012
pst