

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

*Date of decision: 23<sup>rd</sup> November, 2012*

+ **MAC.APP. 476/2011**

NATIONAL INSURANCE COMPANY LTD. .... Appellant  
Through: Mr. L.K. Tyagi, Adv.

versus

SARITA HASIDJA & ORS. .... Respondents  
Through: Mr. J.S. Kanwar, Adv. for R-1 to R-6.

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

### **J U D G M E N T**

#### **G. P. MITTAL, J. (ORAL)**

1. By virtue of this Appeal, the Appellant National Insurance Company Limited seeks recovery rights against the Respondents No.7 and 8 in respect of award of compensation of ₹32,48,600/- in favour of Respondents No.1 to 6 for the death of H.C. Hasija, who died in a motor vehicle accident which occurred on 03.08.2006.
2. The finding on negligence or on the quantum of compensation is not challenged by the Appellant Insurance Company.
3. The only ground of challenge raised is that the Appellant successfully proved the breach of the terms and conditions of the policy. The Claims Tribunal erred in declining the recovery rights to the Appellant against the driver being the principal tortfeasor and against the owner being the insured of the offending vehicle and employer of Respondent No.7.

4. The Claims Tribunal dealt with the issue of liability in para 24 to 27 of the impugned judgment. The Claims Tribunal relied on the judgment of this Court in *Deepak Kumar v. National Insurance Co. Ltd.*, MAC APP.139/2007 decided on 07.02.2008 and held that mere prosecution of the driver under Section 3/181 of the Motor Vehicles Act, 1988 (the Act) was not enough to prove the breach of the terms and conditions of the policy. The Claims Tribunal further relied on *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 where it was held as under:-

*89. ....A person possessing a driving licence for “motorcycle without gear”, [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for “light motor vehicle” is found to be driving a “maxi-cab”, “motor-cab” or “omnibus” for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.”.*

5. There cannot be any dispute about the proposition of law that mere prosecution of the driver under Section 3/181 of the Act will not be sufficient to prove that the driver did not possess a valid driving licence. The driver can always produce the licence during trial. Similarly, even conviction of a driver under section 3/181 of the Act would only show that the driver did not possess a valid and effective driving licence. That

by itself would not be sufficient to prove a willful breach of the insurance policy on the part of the insured.

6. In the instant case the Appellant Insurance Company proved that Respondent No.7 was prosecuted under Section 3/181 of the Act in addition to the offence of causing death by rash and negligent driving by proving the report under Section 173 Cr.P.C. (Ex.R3W1/A). The Appellant Insurance Company did not stop there, it issued a notice dated 28.06.2010 Ex.R3W1/B sent to the owner to produce the driving licence of the driver. The postal receipt was proved as Ex.R3W1/B. R3W1 Kishroe Kumar Mattoo filed an Affidavit Ex.R3W1/1 testifying all these facts. Respondents No.7 and 8 (the driver and the owner) failed to file the written statement despite sufficient opportunities and were proceeded ex-parte vide order dated 09.03.2009. Thus, the testimony of R3W1 regarding prosecution of the driver under Section 3/181 of the Act and regarding service of notice for production of the driving licence remained unchallenged and unrebutted.
7. R3W1 proved the insurance policy Ex.R3W1/C containing the condition that the Insurance Company would not be liable to pay the compensation if a person driving the vehicle including insured did not hold an effective driving licence at the time of the accident. Thus, the Insurance Company did whatever was in its power to prove that there was willful and conscious breach of the terms and conditions of the policy on the part of the insured. Respondents No.7 and 8 as stated above preferred not to contest the proceedings and were proceeded ex-parte.
8. In the circumstances, the Appellant successfully proved the breach of the terms and conditions of the policy and was entitled to recover the

compensation from Respondents No.7 and 8, the driver and owner of the offending vehicle.

9. I am supported in this view by the judgment of this Court in *New India Assurance Company Ltd. v. Sanjay Kumar & Ors.*, ILR (2007) 11 Delhi 733, wherein it was held as under:

*“23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breach the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.*

*24. That apart, what more can the insurance company do other than to serve a notice under Order 12 Rule 8 of the Code of Civil Procedure calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company.”*

10. Reliance on *Swaran Singh* by the Claims Tribunal is misplaced. Non possession or invalidity of a driving licence may not be material where the accident takes place when the vehicle is not being driven. For instance, a stationary vehicle may catch fire resulting in injuries to the passers by. In such circumstances only the Insurance Company would not be permitted to raise plea of violation on account of non holding of a licence by driver of the vehicle involved in the accident.
11. In view of the above discussion, the Appeal has to succeed. The same is accordingly allowed.

12. The Appellant Insurance Company would be entitled to recover the compensation from Respondents No.7 to 8 in execution of this very judgment without having recourse to independent recovery proceedings.
13. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
14. Pending Applications also stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**NOVEMBER 23, 2012**  
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