

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

Date of Decision: 6th December, 2012

+ **MAC. APP. 635/2012**

ORIENTAL INSURANCE CO. LTD. Appellant
Through Mr. Tarkeshwar Nath & Mr.Saurabh
Kumar Tuteja, Advocates
versus

HARDIYANAND PARSHAD & ORS. Respondents
Through None.

+ **MAC. APP. 644/2012**

ORIENTAL INSURANCE CO. LTD. Appellant
Through Mr. Tarkeshwar Nath & Mr.Saurabh
Kumar Tuteja, Advocates
versus

MASTER SATVIR KUMAR & ORS. Respondents
Through None.

+ **MAC. APP. 646/2012**

ORIENTAL INSURANCE CO. LTD. Appellant
Through Mr. Tarkeshwar Nath & Mr.Saurabh
Kumar Tuteja, Advocates
versus

MS.MAANSI ZALPURI & ORS. Respondents
Through None.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These three Appeals (MAC.APPs.635/2012, 644/2012 and 646/2012) arise out of a common judgment dated 29.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹3,75,000/-, ₹3,30,849/- and ₹15,000/- was awarded respectively in MAC.APP. 635/2012, MAC.APP. 644/2012 and MAC.APP. 646/2012.
2. In MAC.APP.644/2012 & 646/2012, the quantum of compensation is not challenged whereas in MAC.APP.635/2012 a compensation of ₹ 3,75,000/- was awarded for the death of a minor child. This Court while listing the case for consideration observed as under:-

“2. In *Manju Devi v. Musafir Paswan*, VII (2005) SLT 257, the Supreme Court awarded a compensation of ₹ 2,25,000/- in respect of death of a 13 years old boy by applying a multiplier of ‘15’ and taking the notional income of the deceased’s child as ₹ 15,000/- per month. The said case related to an accident which occurred in 1998, deduction of 1/3rd towards personal and living expenses was not made in the said case.

3. Following *Manju Devi*(supra), this Court in *Shyam Narayan v. Kitty Toors*, IV (2005) ACC 1 awarded a compensation of ₹2,25,000/- towards loss of dependency and ₹50,000/- on account of loss of company of the child. In *R.K. Malik v. Kiran Pal*, III (2006) ACC 261, this Court granted a compensation of ₹75,000/- towards non-pecuniary damages which on Appeal to the Supreme Court in *R.K. Malik v. Kiran Pal*, 2009 (8) Scale 451 were approved. The Hon’ble Supreme Court further awarded a compensation of ₹75,000/- towards future prospects for death of each of the child.

4. All these cases were considered by this Court in *National Insurance Company v. Farzana & Ors.*, 2009 ACJ 2763 and a

compensation of ₹3,75,000/- (₹2,25,000/- towards loss of dependency, ₹75,000/- towards non-pecuniary damages and ₹75,000/- towards future prospects) was awarded. The award of ₹3,75,000/- made by the Claims Tribunal is based on settled law and does not call for any interference.

5. The Appellant/Insurance Company is directed to deposit the amount of compensation with the Claims Tribunal within six weeks and file a report in this Court in this regard.

6. With regard to recovery rights against Respondents No. 3 and 4 Trial Court record be requisitioned.”

3. I have perused the Trial Court record. The plea of the Appellant Insurance Company is that the driving licence issued in favour of the driver Bhagwati Parshad was cancelled on 23rd October, 2007, that is, a few days before the accident took place on 30th October, 2007. There was a breach of the terms and conditions of the policy on the part of the Insured, and the Appellant Insurance Company is entitled to recovery rights. The Claims Tribunal dealt with the issue of liability in Paras 22 and 23 of the impugned judgment dated 29.02.2010⁷ which are extracted hereunder:-

“22. The Ld. Counsel for insurance company argued that since the driving licence of offending driver was cancelled by RTO Authorities so there is a breach of terms and conditions of policy at the time of accident. The driver should have a valid and effective driving licence at the time of accident. The Ld. Counsel made an effort to draw a conclusion from newspaper report which appeared immediately after the accident inter alia pleading the driver of offending vehicle was habitual defaulter of driving licence. Repelling these arguments counsel for petitioners argued that insurance company is liable to indemnify the owner of offending vehicle. The insurance company failed to discharge his onus that owner who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed. The expression ‘breach’ occurring in Section 149(2)(a)(ii) of the Act means

infringement or violation of promise or obligation. As such the insurance company will have to establish that insurance was guilty of and infringement or violation of promise. He further argued that there is not even any allegation that it was the owner who was guilty of violation the condition that vehicle shall not be driven by any person not duly licensed. The insurance company must establish that breach is on the part of insured. Unless the insured is at fault and he is guilty of breach of condition, the insurer cannot be escaped from obligation to indemnify the insured.

23. *I have heard arguments advanced by the counsel for the parties. Though the insurance company disputed its liability on the ground that driving licence of driver was not valid and effective as cancelled prior to the accident as evident from the testimony of R3W2 Sh.Rohtas Singh, LDC Seikh Sarai Authority and issuing authority report but there is nothing on record to suggest that owner at the time of employing the driver was aware of this fact. Moreover, newspaper report placed on record by insurance company reveals that driver was habitual of procuring driving licence on fake documents. The onus is upon the insurance company that owner at the time of handing over the vehicle to the driver was well aware of this fact. The record is devoid of any such assumption and suggestions. Further, more such kind of documents/newspaper report cannot be relied upon by insurance company as defence unless it is proved that the fact of fake driving licence was in the knowledge of owner of vehicle. In the aforesaid claim petitions undisputed accident has occurred due to negligence of the offending driver and thus vicariously liability is fastened upon registered owner. Since however at the time of accident the Oriental Insurance Company is insurer, therefore, insurance company is liable to indemnify. These aforesaid claims shall be paid by insurance company.”*

4. It was stated by R3W2 Rohtash Singh, LDC from the Office of Licensing Officer, Seikh Sarai that the driver's licence was cancelled on 23.10.2007. The witness was completely silent that information with regard to the cancellation of driving licence was sent to the driver, leave

apart the owner of the vehicle. The Insurance Company failed to adduce any evidence that the driver was informed about the cancellation.

5. Admittedly, there was close proximity in cancellation of licence and the accident. In the absence of any specific evidence led by the Appellant Insurance Company that the driver was duly informed and consequently, the owner was also aware that the validity of the driving licence has come to an end, it cannot be said that the vehicle was allowed to be driven by the Insured by a person who did not possess a valid and effective driving licence. Thus, the insurer failed to discharge the initial onus placed on it that there was a conscious breach of the terms and conditions of policy on the part of the Insured. The Claims Tribunal rightly fastened the liability upon the Appellant Insurance Company.
6. The Appeals are devoid of any merit; the same are accordingly dismissed in *limine*.
7. Statutory amount of ₹ 25,000/-, if any, shall be refunded to the Appellant Insurance Company in each Appeal.
8. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 06, 2012

v