

\$~5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th August, 2012

+ **MAC. APP. No.457/2008**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. B.K. Mishra, Advocate for
Ms. Neelam Singh, Advocate

Versus

PARU DEVI & ORS. Respondents
Through: Ms. Aeshna Saxena, Advocate for
Mr. Harvinder Singh, Advocate for the
Respondents No.1, 2 & 4(Claimants).

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Co. Ltd. impugns a judgment dated 22.04.2008 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹3,19,000/- was awarded in favour of the Respondents No.1 to 5.
2. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988(the Act) was converted to one under Section 163-A of the Act and the compensation was awarded as per Schedule II to the Act.
3. The only ground of challenge raised during hearing of Appeal is that the Appellant Insurance Company successfully proved the breach of the

terms of the policy. In spite of this, no recovery right was granted to the Appellant.

4. In order to prove breach of the terms of the policy, the Appellant Insurance Company examined Hukum Singh, Record Clerk and Ashok Kumar, Clerk RTO as RW1 and R3W2 respectively. The Appellant proved on record that a notice under Order XII Rule 8 CPC was issued to the driver and the owner of the vehicle to produce the driving licence held by the driver at the time of the accident. The driving licence No.553769 which was seized by the Investigating Officer in the criminal case was stated to have not been issued by the Transport Authority, Karnal. The Claims Tribunal dealt with the issue of liability in Para 10 of the impugned judgment, which is extracted hereunder:

“10. In order to establish the defence taken by respondent No.3, learned counsel for respondent No.3 has examined Shri Hukum Singh, Record Clerk and Shri Ashok Kumar, Clerk RTO as RW1 and R3W2 respectively. RW1 exhibited the carbon copy of the policy of the offending bus as Ex.RW1/A. He also testified that they got verified the driving licence No.553769 from the Licensing Authority Karnal and got the report that the driving licence had not been issued from the said authority and it was also not renewed from their authority. After getting the report they requested their counsel to issue the notice under Order 12 Rule 8 CPC and accordingly the notice Ex.RW1/B was issued to the driver. The postal receipt is Ex.RW1/C and the AD card is Ex.RW1/D. The notice Ex.RW1/E was also issued to the insured, postal receipt is Ex.RW1/F and AD card is Ex.RW1/G. He further testified that the insured has violated the terms and conditions of the policy as he gave his vehicle to a person who had no valid driving licence at the time of accident. R3W2 produced the driving licence record of the driving licences issued on 23.9.2000. He testified that as per their record no licence was issued to Hari Singh son

of Lal Mann on 23.9.2000. As per their record licence No.241/HTV/2000 was issued on 22.9.2000 and on 25.9.2000 licence No.242/HTV/2000 was issued from their authority. Licence No.553769 dated 23.9.2000 was not issued from their authority. He exhibited the copies of license No.241/HTV/00 and 242/HTV/00 as R3W2/1 and R3W2/2(original seen and returned). Though RW-1 has testified that the driving licence No.553769 was got verified from the Karnal authority and R3W2 has testified that the aforesaid licence was not issued by the Karnal Authority, respondent No.3 has failed to prove any link between the driving licence No. 553769 and the respondent No.1 because it failed to prove the certified copy of driving licence in question. Vide notice Ex.RW1/B and the notice Ex.PW1/E, the insurance company had demanded the driving licence No. 553769 of driver as well as insurance policy. If the driver and insured had not produced the said driving licence in the court on receipt of the notice, the burden of proving the driving licence was on respondent No.3 by producing and exhibiting its certified copy. As the respondent No.3 has failed to establish any link between license No. 553769 and the respondent No.1, to my considered opinion respondent No.3 has failed to discharge the burden of proving that the driver was not holding a valid and effective driving licence at the time of accident. In view of above discussion issue No.2 is decided against respondent No.3 and in favour of the petitioner.”

5. Thus, it will be seen from the Claims Tribunal’s order that a notice under Order XII Rule 8 CPC (Ex.RW1/B) to the driver and notice to the owner (the insured) Ex.RW1/E) was served. Their postal receipts and AD cards were also proved. The driver and the owner of the vehicle, that is, the Respondents No. 6 and 7 herein preferred not to contest the proceedings and did not respond to the notice under Order XII Rule 8 CPC. The Appellant Insurance Company could not have done anything more than this. If the owner did not come forward to produce any other driving

licence held by the driver at the time of the accident, the inference is that no other driving licence was in possession of the driver. I am supported by the judgment of the Learned Single Judge of this Court in *New India Assurance Company Ltd. v. Sanjay Kumar & Ors.*, ILR (2007) 11 Delhi 733, wherein it is 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.”

6. Since the Appellant Insurance Company successfully proved the breach of the terms of the policy, it was entitled to recovery rights. It is ordered that the Appellant Insurance Company shall be entitled to recover the amount of compensation paid from Respondents No.6 and 7 in execution of this very judgment without having recourse to independent civil proceedings.
7. The amount of compensation shall be disbursed to the Respondents in terms of the order passed by the Claims Tribunal. The compensation

payable to the Respondents No.3 and 5 shall be paid to the Respondent No.1.

8. The Appeal is allowed in above terms.
9. Statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
10. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 17, 2012
pst