

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

Decided on: 2nd March, 2012

+ **MAC.APP. 739/2011**

NEW INDIA ASSURANCE CO. LTD. Appellants

Through: Mr. Kanwal Chaudhary
Advocate

versus

SMT. KUSUM BILLAIYA & ORS. Respondents

Through: Mr.O.P. Mannie Adv. for R-
1(a) to 1(e).

+ **MAC.APP. 105/2012**

SMT. KUSUM BILLAIYA & ORS. Appellants

Through: Mr.O.P. Mannie Adv. for A-(a)
to 1(e).

versus

NEW INDIA ASSURANCE CO. LTD. Respondents

Through: Mr. Kanwal Chaudhary
Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Company Limited (in MAC APP.739/2011) impugns the judgment dated 23.05.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) awarded a compensation of ₹ 8,72,000/- for the death of Narayan Das Billaiya in an accident which occurred on

27.03.2007.

2. There is twin challenge to the award. Firstly, it is contended that the Appellant Insurance Company was entitled to avoid its liability as the driver did not possess a valid driving licence on the date of the accident. Secondly, it is urged that a sum of ₹ 50,000/- was awarded towards the loss of love and affection which is on the higher side.
3. It may be mentioned that at the time of admission of the Appeal notice was ordered to be issued only to the Respondents No.1 (a) to 1(e). Thus, notice of the Appeal was not issued to the owner and the driver.
4. The Claims Tribunal gave detailed reasons for reaching the conclusion that there was no willful breach of the terms of the policy. While dealing with the question of liability, the Claims Tribunal held as under:-

“Now come to the questions who is liable to pay the above compensation amount. Accident took place on 27-3-2007. From the statement of R3W1, an official of Motor Licensing Department, it has come on record that driving license of respondent no. 1 had already been cancelled on 22-2-2007 on the request of DCP (Traffic) as he was earlier also involved in some accident case. However, this witness not only in examination in chief but also in cross examination specifically stated that driving license of respondent no.1 was cancelled by Motor Licensing Officer without giving any show cause notice to him. He even stated to such extent that concerned MLO used to cancel the driving license

without giving any notice simply on the receipt of request from Traffic Police. Respondent no. 1 while appearing as RIW1 also stated that he had no knowledge about cancellation of his driving license and he produced original driving license even in court which was not surrendered or taken back from him by the concerned MLO. Section 19 of Motor Vehicle Act and relevant Motor Vehicle Rules prescribe the manner in which driving license has to be cancelled. There is a requirement of issuing of show cause notice to the license holder as well giving him an opportunity to submit reply of that show cause notice and if need arises to give him personal hearing. Action of MLO to cancel the driving license of respondent no. 1 without issuing of show cause notice is a violation of principles of natural justice as well as mandatory rules and provisions and in such situation the driving license of respondent no.1 on the date of accident has to be treated as valid and legal. Respondent no.3 is not permitted to take any benefit of cancellation order of driving license passed by MLO on 22-2-2007 which is apparently illegal and against the rules.

Otherwise also, as per statement of R2W1, owner of the offending vehicle he had engaged respondent no. 1 as his driver in first week of December, 2006 and before that he had taken his trial of driving truck. His version that he had no knowledge about any previous accident caused by respondent no.1 before employing him cannot be disbelieved. On the day when respondent no. 1 was employed by respondent no. 2, he was holding valid driving license which was allegedly cancelled later on few days prior to the date of accident. It is not the case of respondent no. 3 that any intimation of cancellation of driving license was sent to respondents no. 1 or 2 by MLO concerned. Respondent no. 2 thus had taken all the necessary precautions before employing respondent no. 1 and in this regard reliance can be placed upon the

decision of our own High Court given in cases ***Oriental Insurance Co. vs. Arun Saha III*** (2008) ACC 218 and ***National Insurance Co. vs. Nirabjit Kaur IV*** (2008) ACC 136. In such circumstances, it cannot be held that respondent no. 2 intentionally or knowingly had allowed respondent no. 1 to drive the offending truck and he was having full knowledge of fact of cancellation of driving license of the respondent no. 1. It was not the duty of the respondent no. 2 to go to the Licensing Authority regularly to check the status of the driving license of respondent no. 1 because when he had employed respondent no. 1, his driving license was valid and proper and he was competent to drive the offending truck. In this regard some reliance can be placed upon the decision of Supreme Court given in case ***National Insurance Co. vs. Geeta Bhat II*** (2008) ACC 341. Even if for the sake of arguments, it is presumed that respondent no. 1 was having knowledge of cancellation of his license and still he drove the offending truck which amounts to the breach of terms of insurance policy, then also that was not willful default or breach on the part of respondent no. 2. Respondent no. 3 was required to prove through cogent and convincing evidence that respondent no. 2 had intentionally committed breach of terms of insurance policy and he was having full knowledge of cancellation of driving license of respondent no. 1 but still took risk and allowed him to drive the offending truck on the date of accident. In this regard, R3W2 official of insurance company has not alleged any single word. Accordingly, respondent no. 2 cannot be held liable in any manner and respondent no. 3 insurance company has to indemnify him. No recovery rights can be given to respondent no. 3 in the present facts and circumstance. Mere issuing of notice under Order 12 Rule 8 CPC is of no consequences. Keeping in view the existence of valid insurance policy, respondent no. 3 alone becomes liable to pay entire compensation amount.”

5. Thus, it is evident that there was no willful breach on the part of owner entitling the Insurance Company to avoid the contract of Insurance.
6. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection.
7. In this case, the Claims Tribunal has granted ₹ 50,000/- towards loss of love and affection. Considering the overall compensation of ₹8,72,000/-, I would say that the compensation is not exorbitant or excessive.
8. I would not like to interfere with the impugned judgment. The MAC APP.739/2011 filed by the Appellant Insurance Company is accordingly dismissed.
9. Learned counsel for Respondents No.1 (a) to 1(e) withdraw the Cross Objections. They are dismissed as withdrawn.
10. The statutory amount shall be returned to the Appellant Insurance Company.
11. The award amount deposited shall be disbursed to the Respondents No.1 (a) to 1(e) in terms of the Claims Tribunal's

order and the deposit shall be made in UCO Bank, Delhi High Court Branch, New Delhi.

12. The date 23.05.2012 fixed in MAC APP.105/2012 stands cancelled.
13. Both the Appeals stand disposed of accordingly.
14. Pending applications also stands dispose of.

(G.P. MITTAL)
JUDGE

MARCH 02, 2012
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