

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

Reserved on: 3rd August, 2012
Pronounced on: 9th October, 2012

+ **MAC.APP. 577/2010**

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD..... Appellant
Through: Mr. A.C. Mittal, Advocate

versus

MANISH KAPOOR & ORS. Respondents
Through: Mr. Sidharth Gautam, Adv. for R-2.

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

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant IFFCO Tokio General Insurance Company Limited takes exception to a judgment dated 09.07.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹42,059/- in favour of the First Respondent, the Claims Tribunal declined to exonerate the Appellant and even refused to grant recovery rights on the ground that the Appellant failed to establish willful breach of the terms of the policy.
2. The finding on negligence or the quantum of compensation is not challenged by the Appellant Insurance Company.
3. It is urged that a notice dated 27.01.2010 under Order XII Rule 8 CPC (Ex.R2/W1/2) and another notice dated 18.02.2010 (Ex.R2W1/3) were duly served upon Anil (Respondent No.3) to produce the driving licence of his driver Danish. Respondent Anil failed to produce the driving licence or even

respond to the notice and thus, the Claims Tribunal ought to have exonerated the Appellant or at least granted it recovery rights. The Claims Tribunal dealt with the issue of liability as under:-

“18. According to the evidence of the insurance company the driver of the TSR was not holding a driving licence at the time of accident. The insurance company through evidence of witness R2W1 has proved on record the notice under Order 12 Rule 8 CPC issued by the insurance company to the owner and also in support has relied on report of investigator which is Ex.R2W1/6. The insurance company has not examined any other witness in support. In absence of the same it cannot be said that this plea of the insurance company that TSR was being driven without licence at the time of accident is to be accepted. The offending vehicle is insured with insurance company R2. The initial liability is of the insurance company unless it proves any infraction or a valid defence. To discharge the burden the insurance company could have called record from office of Licensing Authority. It has also not served a notice under Order 12 Rule 8 CPC to driver of the offending vehicle.

19. R3 in the present case is the main tortfeasor. R1 being the owner of the offending vehicle though exparte in whole proceedings has the vicarious liability to make the payment of amount under the award. Since R1 had taken up the insurance policy to cover the accident risk, therefore, the responsibility of the payment of compensation is of the insurance company only. The insurance company though has raised the defence of no driving licence of the driver of the TSR has failed to prove the same by adducing cogent & sufficient evidence and as such would make the payment of compensation of the award amount to the petitioner.”

4. In the written statement filed by the Appellant, a general defence was taken that if the driver of the insured vehicle did not possess a valid and proper driving licence at the time of the accident, the Insurance Company would not be liable to pay any amount of compensation. During the inquiry before the Claims Tribunal, the Appellant obtained the investigator's report Ex.R2W1/6 which reveals that the driver did not possess a valid driving licence and was also challaned under Section 3 read with Section 181 of the Motor Vehicles

Act, 1988. It is true that the prosecution of the driver under Section 3 of the Act by itself is not sufficient to draw a presumption that the driver did not possess a valid driving licence for the purpose of a Claim Petition under Section 166 of the Act, unless the insured is put to notice to produce the driving licence held by the driver. In the instant case, two notices one dated 27.01.2010 Ex.R2W1/2 and the other dated 18.02.2010 Ex.R2W1/4 were sent by speed post and registered post respectively. Since the same were correctly addressed; in the absence of any rebuttal, a presumption of service of these notices can be drawn against Respondent No.3, the owner of the offending vehicle No.DL-1RC-3043.

5. It is true that no notice was served upon Respondent No.2(the driver) to produce the driving licence. But, Respondent No.3 the owner of the offending vehicle, has not come forward with any explanation for non production of the driving licence. He has not stated that he saw the driving licence of the driver at the time of employing him or that the driver ceased to be under his control. In the circumstances, in my view, the Insurance Company discharged the initial onus of proving that the insured committed breach of the terms and conditions of the policy. Now it was for the insured to have come forward and to give an explanation as to the circumstances in which he handed over the vehicle to the driver. In the absence of any explanation, an inference can be drawn that the owner handed over the vehicle to the driver who did not possess any valid and effective driving licence.
6. The Appellant Insurance Company has thus successfully proved the breach of the terms of policy. The Claims Tribunal erred in not granting recovery rights to the Appellant.

7. On the basis of strength of *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297; and *United India Insurance Company Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338, the Appellant Insurance Company would be entitled to only recovery rights as it has successfully proved the breach of the terms of policy.
8. In view of the above discussion, the Appeal is allowed and the Appellant Insurance Company is granted right to recover the compensation from the Respondent No.3 (the owner of the offending vehicle) in execution of this very judgment without having recourse to independent civil proceedings.
9. The statutory deposit of ₹25,000/- shall be refunded to the Appellant.
10. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 09, 2012

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