

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

Date of decision: 30th August, 2012

+ **MAC. APP. 568/2008**

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SHAMSHER SINGH & ORS. Respondents

Through Nemo.

+ **MAC. APP. 608/2008**

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SHAMSHER SINGH & ORS. Respondents

Through Nemo.

+ **MAC. APP. 612/2008**

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SUMAN LATA & ORS. Respondents

Through Nemo.

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 arise out of a common judgment dated 04.07.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby three Claim Petitions titled *Shamsher Singh & Ors. v. Suraj Bhan & Ors.* (Suit No.248/2001), *Shamsher Singh v. Suraj Bhan & Ors.* (Suit No.249/2000) and *Smt. Suman Lata & Ors. v. Suraj Bhan & Ors.* (Suit No.250/2001) were decided and compensation was awarded in favour of the Claimants.
2. The only ground of challenge is that the Appellant Insurance Company by examining R4W1 Akshaya Kumar Ramtaraya proved that the initial driving licence (issued in the year 1984), held by the First Respondent Suraj Bhan, who was the driver of the bus No.HR-39-4628 at the time of the accident on 07.05.2001, was fake. Thus, it is contended that the subsequent renewal on the basis of the initial fake licence cannot validate the forgery and even the subsequent licence would become invalid.
3. Before dealing with the legal question, a few facts need to be noticed. First Respondent Suraj Bhan was an employee of the Haryana Govt. and was employed as a driver under the General Manager, Haryana Roadways, Bhiwani Depot.
4. The Claim Petitions were filed in the year 2001 immediately after the accident. The written statement was filed by the First Respondent (Suraj Bhan, driver of the Haryana Roadways Bus) denying negligence on his part; the accident, however, was admitted. Respondents No.2 and 3, that is, General Manager Haryana Roadways also denied the negligence on the part of the First Respondent. In Para 11 of the Preliminary Objection

it was specifically pleaded that the First Respondent was holding a valid driving licence at the time of the accident and the liability if any, would be of the Insurer (the Appellant herein) as the Haryana Roadways had obtained an insurance policy which was valid from 14.03.2001 to 13.02.2002; which covered the period of accident. The Appellant, who was Respondent No.4 before the Claims Tribunal, filed a written statement after the written statement filed by Respondent No.1 and a joint written statement filed by Respondents No.2 and 3. There was not even a whisper by the Appellant that the driver did not possess a valid driving licence or that there was a condition in the insurance policy that if the driver did not possess a valid and effective driving licence, it would be entitled to avoid the liability of the insurance policy.

5. After filing its written statement, the First Respondent preferred not to contest the proceedings. He was ordered to be proceeded ex-parte. He was still concerned about the case and the interest of his employer Respondents No.2 and 3, he, therefore, examined himself as R2W1. He deposed that the accident was not caused because of his negligence. He stated that he was holding a valid driving licence at the time of the accident. He also proved a photocopy of the driving licence as Ex.R2W1/A. In cross-examination, the First Respondent testified that the driving licence Ex.R2W1/A was issued on the basis of a previous licence issued from Cuttack. The previous licence was issued by the MLO, Cuttack in the year 1984. A suggestion was given to the First Respondent that his previous driving licence was fake. Thus, it was for the first time on 20.04.2007 that the Respondent Insurance Company without any pleading tried to set up a case that the driving licence possessed by the

driver was on the basis of a previous driving licence issued by the Cuttack Transport Authority was fake.

6. The Appellant Insurance Company produced R4W1 Akshay Kumar Ramtaraya who stated that the driving licence No.S-11572/DL dated 21.08.1984 Ex.R2W1/A has not been issued by them as per their record. He also produced copy of the driving licence issued by MLO Cuttack on 21.08.1984. The testimony of this witness was not challenged in cross-examination by Respondents No.1 to 3. No evidence was produced by Haryana Roadways, not even a plea was taken that it was mandatory for a driver to take a test before one could be employed with the Haryana Roadways. No plea was taken that the driving licence produced by the First Respondent was verified or that it was believed to be genuine and that the First Respondent had qualified the test. It goes without saying that it is a normal practice to undertake a test for appointment as a driver for any Govt. job.
7. The Claims Tribunal, however, rejected R4W1's testimony on the ground that all the licences issued on 21.07.1984 are for motorcycle and LTV as per the driving licence Register Ex.R4W1/1 and therefore, there must be some other register maintained by RTO, Cuttack Authority for issuance of the licence for HTV. Para 32 of the impugned order is extracted hereunder:-

32 It is argued on behalf of insurance company/R-4 that offending vehicle was being driven by respondent no.1 without a valid D/L, hence, they are not liable to pay the compensation. It is argued on behalf of petitioners that liability remains with that of the respondent no.4/insurance company to pay the compensation and they can recover the same from the insured in case it is found that

vehicle was driven under invalid driving licence with the knowledge of the insured. In order to prove that licence was fake respondent no.4/insurance company has examined R4W1, and also summoned the record from the RTO, Katak . R4W1 had brought the record of 1984-1985 from April and has proved on record the licences issued on 21.7.1984 as Ex.R4W1/A (10 pages). He has submitted that D/L Ex.R2W1/A is fake. The driver has examined himself. He has stated that he was having valid D/L at the time of accident and has proved it as Ex.R2W1/A. He has submitted that he got the licence from Katak and in the year 1984 and on the basis of that D/L he got it issued /renewed from Hissar. The insurance company has examined witness from RTO, Katak. He has proved on record the register in which the D/L for motorcycle and LTV have been issued Ex.R4W1/A (10 pages). It is clear from these documents that no D/L of HTV had been issued vide this register. It clearly shows that Authority must be maintaining two separate registers for licences of LTV, motorcycle and for HTV. D/L of respondent no.1/driver of offending vehicle was for HTV and insurance company has not summoned any register of the relevant period by which licences for HTV had been issued. It is well known fact that the authorities maintains two separate registers one for LTVs and two-wheelers and other for HTVs. It clearly shows that insurance company had failed to discharge the burden placed upon them under law.”

8. As stated earlier, R2W1's testimony was not challenged. Thus, the Claims Tribunal's findings that there must be another register for driving licences for HTV, to say the least, was perverse. I am not able to subscribe to the views of the Claims Tribunal.
9. But, at the same time, the Insurance Company was under an obligation to prove its defence by legal evidence. As stated earlier, The Appellant Insurance Company did not take up the plea that the First Respondent's initial driving licence was fake. It also did not try to amend its written

statement by taking a specific plea in this regard. It was only at the end of the day after seven years when the First Respondent himself proved his driving licence that the Appellant Insurance Company came up with the plea that the driving licence was fake. The Insurance Company did not even prove the insurance policy. The question for consideration is, can in such a situation, the Insurer avoid its liability?

10. Under Section 147 of the Motor Vehicles Act, 1988 (the Act) every owner of a motor vehicle is under obligation to obtain a policy of insurance. The liability of Insurer was made unlimited with the introduction of the Motor Vehicles Act, 1988.
11. Section 149 of the Act enjoins an Insurer to satisfy the judgments and award against persons insured in respect of a third party risk and entitles it to raise limited defence as mentioned in sub-Section (2) of Section 149 of the Act. Sub-Section (4) prohibits an Insurer to impose any condition in the Insurance policy except as mentioned in Section 149 (2) of the Act. Section 149 (2) and (4) of the Act are extracted hereunder:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1)

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3)

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.”

12. Thus, it would be seen that the Insurance Company can put a condition for excluding the use of the vehicle for hire or reward where the vehicle is not covered by a permit to ply it for hire or reward or for organized racing and speed testing or for any purpose not allowed by the permit. It can also impose the condition excluding driving by a named person or by any person who is not duly licensed. The liability under the contract of insurance depends upon the terms of the contract. The owner can always take any policy for extending the risk by paying an additional premium. I am fortified in this view by the Supreme Court report in *National Insurance Company Ltd. v. Prembai Patel (2005) 6 SCC 172*; where a three Judge Bench of the Supreme Court held that under Section 147 (1)(b) of the Act the owner is under obligation to take a policy to cover the risk of an employee arising only under the Workmen's Compensation Act, 1923. The owner could take any policy for extending the risk by paying an additional premium.
13. In the instant case, as stated earlier, the Insurance Company not only failed to give any notice to the Insurer (Haryana Roadways) to produce the policy of insurance but also failed to prove the insurance policy in its possession.
14. Thus, the Appellant failed to prove that it had imposed any condition as laid down under Section 149 (2) (a) (ii) of the Act.
15. In *Tejinder Singh Gujral v. Inderjit Singh (2007) 1 SCC 508*, the Insurance Company failed to prove the policy of insurance. The Supreme

Court approved the finding of the High Court where a presumption was taken that the liability of the Insurer was unlimited. Similarly, in *Chandro Devi & Ors. v. Jit Singh & Ors.*, 1989 ACJ 41, this Court held that in the absence of proof of insurance policy by the Insurance Company, it shall be presumed that the liability of the Insurance Company was unlimited.

16. Since the Appellant Insurance Company failed to prove that its policy was subjected to the conditions as stated earlier, it cannot be permitted to say that the Respondents were guilty of breach of the condition of policy.
17. The Appeals therefore, have to fail; the same are accordingly dismissed.
18. The statutory deposit of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
19. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 30, 2012
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