

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

Reserved on: 13th February, 2012
Pronounced on: 16th February, 2012

+ **MAC.APP. 684/2010**

ALFA THERM LTD. Appellant
Through: Mr. Ashutosh Gupta, Advocate
versus

CHANDRA KALA & ORS. Respondents
Through: Mr. Ram N. Sharma, Advocate
for Respondent No.8.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The question that falls for consideration in this Appeal is whether the Appellant who is the owner of DL-1C-QS-1912 was guilty of willful breach of the terms of policy as the licence held by Sandeep Kumar (the Ninth Respondent) issued by the Dehradun Authority was found to be fake.
2. By the judgment dated 07.04.2010 the Motor Accident Claims Tribunal (the Tribunal) awarded a compensation of ₹ 10,18,440/-. M/s. Alfa Therm Limited, who is the owner of the offending vehicle impugns the award on the ground that although the Oriental Insurance Company Limited (the Eighth Respondent) failed to prove that there was willful breach of the terms of the policy, yet while awarding the compensation

permitted the Insurance Company to recover the compensation from the Appellant and the driver (the Ninth Respondent) as per the procedure laid down in *Oriental Insurance Co. Ltd. v. Shri Nanjappan and Ors.*, AIR 2004 SC 1630.

3. It is well settled that the onus is on the Insurance Company to prove the breach of the condition of contract of Insurance. In *National Insurance Company Limited v. Laxmi Narain Dhut*, (2007) 3 SCC 700, the Supreme Court relied upon *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 and held as under:-

“The insurance company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of the policy on the part of the insured, the insurance company cannot be absolved of its liability. This court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the condition of the contract of insurance, on the part of the insurance company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the records.”

“It was further held, inter alia, that Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act has to be so interpreted as to

effectuate the said object. The judgment added that the breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.”

4. The Appellant contested the Claim Petition filed by Respondents No.1 to 7 on the ground that the cyclist (the deceased) hit the pavement and struck against the stone lying on the road divider due to which he suffered fatal injuries. A plea was taken that the accident was not caused on account of rash or negligent driving of the Ninth Respondent. In fact, the involvement of the vehicle and the factum of accident being caused by the Ninth Respondent was disputed.
5. The Eighth Respondent (the Insurer) took a general defence denying its liability in case the driver was not having a valid driving licence issued from the concerned Transport Authority. Para 6 of the written statement is extracted hereunder:-

“6. That the answering Respondent shall have no liability in case it is held that the Respondent no.2 was plying the offending vehicle without having any valid registration

certificate and Driving licence issued from the concerned authority.”

6. During inquiry before the Claims Tribunal Sandeep Kumar (the driver) filed his Affidavit Ex.R1W1/X corroborating the facts as stated in the written statement filed by the owner. He stated that he was falsely implicated in the case. In cross-examination, he denied that the driving licence Ex.R1W1/R3A was a fake one. He denied the suggestion that he was not resident of Prem Nagar, Dehradun.
7. Harjot Singh Chatha, Director of M/s. Afla Therm Limited (the owner) and the Appellant herein filed Affidavit Ex.R1W2/X corroborating the facts stated in the written statement. In cross-examination, he admitted that his driver Sandeep Kumar was driving the vehicle at the time of the accident.
8. Sometimes, it is very difficult to differentiate between a fake and a genuine licence. The driver in this case always believed that the driving licence held by him was genuine. I would refer to *New India Assurance Co. Ltd. v. Sanjay Kumar*, ILR(2007) 2 Del 733, where it was held as under:

“20. In the context of a fake driving licence, the factual arena becomes a little complex. With the advancement of science and technology and computer aids it has become very easy to replicate licences. Indeed, it has become extremely difficult to distinguish the fake from the real. Cases have been reported where a licence, origin whereof is fake, has been renewed by the Licencing Authority. Kamla’s

case(Supra) was dealing with a licence, origin whereof was dubious but was subsequently renewed by the Licencing Authority. If the Licencing Authority could not detect, when presented for renewal, that the licence was fake licence, how can a lay person detect same?”

9. It is important to note that statement of driver and the owner were recorded as R1W1 and R1W2 on 22.02.2010. No suggestion was given to Harjot Singh, Director and owner (M/s. Afla Therm Limited) that the driving licence held by the Ninth Respondent was fake or that he had allowed the driver to drive the vehicle without holding a valid and effective driving licence. Statement of R3W3 Mukul Kanojiya, Record Clerk, RTO, Dehradun was also recorded on 22.02.2010 and his cross-examination was recorded on 08.03.2010 i.e. after the examination of R1W1 and R1W2 on 22.02.2010.
10. R3W3 testified that as per the record brought by him driving licence number S-38988/03 was issued on 26.07.2003 in the name of one Mahesh Chand Sharma and not in the name of Sandeep Kumar. He deposed that this licence was not issued on 18.06.2004. He deposed that the licence Ex.R1W1/R3A was not issued by Dehradun Transport Authority. A suggestion was given to R3W3 on behalf of the Appellant and the driver that the licence Ex.R1W1/R3A was issued by their Authority, (Dehradun Authority) which of course, was denied by the witness.
11. From what has been stated above, it is clear that no specific

stand was taken by the Insurer (in the written statement) that the licence held by the Ninth Respondent was fake. It is true that the Insurance Company could have proved during evidence that the licence held by the driver was not genuine. The statement of the owner was recorded on 22.02.2010. No suggestion was given to him that the licence held by the driver was not genuine and that he was aware that the licence was not valid. Thus, it cannot be said that the Insurance Company was able to discharge the onus of proving willful breach of the terms of the policy. Since the breach was not willful, the Insurer was under obligation to indemnify the Insured. The Insurer was not entitled to avoid the contract of Insurance and could not have been permitted to recover the compensation awarded from the Appellant.

12. In view of the above discussion, the Appeal is bound to succeed. The impugned judgment so far as it grants recovery rights against the Appellant and the Ninth Respondent is set aside.
13. The Appeal is allowed in above terms. No costs.
14. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 16, 2012

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