

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

Date of decision: 19th October, 2012

+ **MAC. APP. 1030/2011**

ORIENTAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Tarkeshwar Nath, Adv.

Mr. B.K. Pandey, Adv.

Mr. S.K. Tyagi, Adv.

versus

PRITAM KUMAR BURMAN & ORS. Respondents

Through: Shri Ram Pal, Adv. for R-1.

Ms. Ruchir Batra, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Oriental Insurance Company Limited takes exception to a judgment dated 17.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding compensation of ₹3,40,200/- awarded in favour of the first Respondent, the Claims Tribunal rejected the Appellant's plea of breach of terms of policy and made it liable to pay the compensation.
2. The only ground raised at the time of hearing is that the Appellant Insurance Company successfully proved the breach of the terms and conditions of the policy as the licence held by the driver, that is, Respondent No.2 Tara Prasad was proved to be fake; the Claims Tribunal, erred in holding that the Appellant failed to prove that the driving licence was fake.

3. I have before me the Trial Court Record. R3W2 Kesar Chand's testimony that the report Ex.R3W2/2 declaring the driving licence to be fake was signed by the competent authority in his presence was perhaps sufficient to show that it (the driving licence) was fake. The fact, however, remains that it was for the Appellant to establish that there was breach of the terms and conditions of the policy on the part of insured.
4. In *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; the three Judge Bench decision of the Supreme Court while referring to Section 96 (2) (b) (ii) of the Motor Vehicles Act, 1939 held that this Section cannot be interpreted in a technical manner. Section 96 (2) (b) (ii) only enables the Insurance Company to defend the liability to pay the compensation on the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. It was held that if the person who has got the vehicle insured is allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. The Supreme Court held that the insurer has to satisfy the Tribunal that such violation or infringement on the part of the insured was willful. The relevant part of the report is extracted hereunder:-

“12. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance

company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act.....”

5. Similarly, in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, the Supreme Court observed that in order to avoid its liability it is not sufficient for insurer to show that the person driving at the time of the accident was not duly licensed but it must further be established that there was breach on the part of the insured.

6. In the instant case, Respondents No.2 and 3 (driver and owner) filed a joint written statement on 15.09.2009 admitting the accident but denying negligence. In para 17, it was specifically stated that the vehicle was duly insured with the Appellant herein. The Appellant filed a written statement after the written statement filed by Respondents No.2 and 3, that is, only on 08.12.2009. It did not raise any specific plea that the driver did not possess a valid driving licence or that the driving licence held by the driver (Respondent No.2) was fake. A perusal of the Trial Court record shows that Respondents No.2 and 3 (Respondents No.1 and 2 before the Trial Court) did not appear before the Trial Court on 29.01.2010. They were, therefore, ordered to be proceeded ex-parte. The Appellant Insurance Company never issued any notice to the driver and owner of the vehicle informing them that on its investigation, the driving licence has been found to be fake.
7. Thus, it is apparent that the insured was never put to notice that he had committed any breach of the terms and conditions of the policy. Since the driving licence of the driver was on the Trial Court record, in the absence of any specific plea they (the driver and the owner) were content that although the accident did not take place on account of Respondent No.2's negligence, yet, the liability if any, would be of Respondent No.3, that is, the Insurer (the Appellant herein).
8. In the circumstances, if the Appellant wanted to avoid its liability on the ground that the insured was guilty of breach of the policy, it was obliged to issue a notice to the insured informing him that the driving licence has been found to be fake and that the insured could produce a valid driving

licence of the driver. That having not been done, it cannot be said that there was any willful breach of the terms of policy.

9. Thus, the Appellant Insurance Company cannot avoid its liability to indemnify the insured.
10. The Appeal is devoid of any merit; it is accordingly dismissed.
11. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 19, 2012
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