

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

Reserved on: 9th November, 2012
Pronounced on: 15th January, 2013

+ **MAC.APP. 159/2005**

SHRI SIDDHARTH GROVER Appellant
Through: Mr. Ashok Popli, Adv.

versus

SMT. KUSMA DEVI & ORS. Respondents
Through: Mr. Pankaj Seth, Adv. for R-5/Insurance
Company.

+ **MAC.APP. 174/2005**

SHRI SIDDHARTH GROVER Appellant
Through: Mr. Ashok Popli, Adv.

versus

SMT. DROPTI DEVI & ORS. Respondents
Through: Mr. Pankaj Seth, Adv. for R-4/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. A very short question arises for consideration in these two Appeals, that is, whether the Respondent New India Assurance Company Limited proved the breach of the terms and conditions of the policy on the part of the insured so as to avoid its liability.

2. By the impugned judgment while awarding compensation in the two Claim Petitions, in favour of the Claimants the Motor Accident Claims Tribunal (the Claims Tribunal) granted recovery rights holding that as per the driving licence Ex.R3W1/G the driver of the offending vehicle (Respondent Nasiruddin) was authorized to drive only a Light Motor Vehicle (Commercial); and since the vehicle involved in this accident was a Heavy Motor Vehicle, the insured committed breach of the terms and conditions of the policy.
3. It is not disputed that the vehicle involved in the accident was a Heavy Motor Vehicle. It is also proved that a notice Ex.R3W1/A under Order XII Rule 8 CPC was served upon the driver and the owner to produce the driving licence No.C08102002317657 issued on 28.10.2002 and which was to expire on 27.10.2005. This driving licence was issued by the Licensing Authority, North West Zone, Delhi on 06.02.2000 and was renewed on 28.10.2002. The Respondent Insurance Company did not ask the driver and the owner to produce any other driving licence which might be valid to drive a Heavy Motor Vehicle.
4. The impugned judgment makes a mention about the driving licence placed on record by the owner and the driver issued from Kolkata, West Bengal showing that Respondent No.1 was authorized to drive a Heavy Goods Vehicle. The Claims Tribunal, however, held that it was for the owner and the driver to prove that the driving licence issued by the Transport Authority, Kolkata was valid and effective. The Claims Tribunal fell into error in appreciating the true legal position.
5. It is *no longer res integra* that the onus to prove the breach of the terms and conditions of the policy is on the insurer.

6. 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 has 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.....”

7. 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.
8. Turing to the facts of the instant case, the insurer did not ask the driver and the owner to produce the driving licence issued by the Kolkata Transport Authority, West Bengal which apparently was valid to drive a Heavy Goods Vehicle. In spite of this, the driving licence was produced by the driver/owner and was available on record before the Claims

Tribunal. It was for the Respondent Insurance Company to prove that the driving licence issued by the Kolkata Transport Authority, West Bengal was not genuine and thus, the Respondent Insurance Company was entitled to avoid the policy of insurance.

9. In my view, the Respondent Insurance Company failed to prove the wilful breach of the terms and conditions of the policy on the part of the Insured. The impugned order so far as it grants recovery rights against the Appellant cannot be sustained; the same is accordingly set aside.
10. The Appeals are allowed in above terms.
11. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant in each of the cases.
12. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2013

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