

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

Reserved on: 2nd August, 2013
Pronounced on: 30th August, 2013

+ **MAC.APP. 293/2010**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate with
Mr. Amit Gaur, Advocate

versus

SHAHNAWAZ & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited (the Insurance Company) impugns a judgment dated 03.09.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Claim Petition No.20/2008 whereby a compensation of ₹ 5,05,000/- was awarded in favour of the respondents Nos. 1 to 3 for the death of one Aabid who died in a motor vehicle accident which occurred on 25.04.2005.
2. The only ground of challenge raised in the instant appeal is that Ranjeet Singh (Respondent No.5) driver of the offending Tata Sumo bearing registration No.HR-55-AD-9530 possessed a licence to drive LMV (NT); thus he was not entitled to drive a commercial vehicle. The owner Jagar Singh (Respondent No.4) gave the vehicle to be driven by a person who did not possess a valid driving licence to drive a commercial transport

vehicle. Thus, the appellant insurance company was entitled to be exonerated, in any case, the appellant was entitled to recovery rights.

3. It is admitted case of the parties that the vehicle involved in the accident, that is, HR-55-AD-9530 a Tata Sumo was registered as a tourist taxi. The Claims Tribunal while dealing with the issue of liability while relying on the judgment of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 held that every proven breach of the policy will not entitle the insurer to avoid his liability. Whether Tata Sumo was registered as a commercial vehicle or a non-commercial vehicle will not make any difference. Since Tata Sumo was covered within the category of LMV, the Insurance Company will not be entitled to take the plea of the breach of the terms and conditions of the policy. Paras 60 to 64 of the impugned judgment dealing with the issue of liability are extracted hereunder:-

“60. Merely because a person was holding a driving licence for a car or any other light vehicle like jeep, is found driving any other vehicle of same category, for which he had no licence, than in view of the observations of Hon’ble Supreme Court, it will not be a valid defence for the insurer to avoid his liability, in case accident takes place in this eventuality.

61. In such a case, in order to have itself absolved of its contractual liability, insurance company would have to establish on record that possessing licence by the drive of another type of vehicle, played main role in the cause of accident.

62. In the present case, by virtue of deposition of RW-1, it is apparent that respondent no.3 was authorized to drive car and jeep. It is also apparent from the record i.e. from Insurance Policy as well as from ‘registration certificate’ of the offending vehicle that TATA Sumo (offending vehicle) which is equivalent to Jeep, was being driven by respondent no.3 in this case. The only difference being, that the TATA Sumo was registered as

“Commercial Vehicle”. Insurance Company then was under a legal obligation to establish on record that non-possession of a commercial licence by respondent no.3, was the “main cause” of this accident.

63. *However from the factual matrix proved on record, it is established that the accident had not taken place only because respondent no.3 was not possessing the licence to drive commercial vehicle or was not having that expert skill, which is required to drive “commercial vehicle”. The manner in which the accident had taken place as deposed by PW-4 on record and as discussed while disposing off issue no.1 would not have made any difference, if the offending vehicle would have been a “private vehicle or a commercial vehicle.”*

64. *In view of these facts and circumstances, I am of the considered opinion that Insurance Company in such an eventuality cannot be absolved of its liability to indemnify the insured. As the offending vehicle was insured with them. In view thereof, liability to compensate the petitioners remains that of respondent no.1 Insurance Company.”*

4. Mr. Pradeep Gaur, learned counsel for the appellant Insurance Company while relying on the judgment of the Supreme Court in *National Insurance Company Limited v. Kusum Rai & Ors.* (2006) 4 SCC 250 argues that *Swaran Singh* was duly considered by the Supreme Court in *Kusum Rai* and it was held that since a person possessing a non-transport (NT) licence is not entitled to drive a transport vehicle, the holder of a licence to drive LMV will not be entitled to drive a taxi and the Insurance Company will be entitled to avoid the insurance. In *Kusum Rai* the offending vehicle, that is, jeep bearing registration No.BR-03-P-9011 was being used as a taxi and thus was a commercial vehicle. Ram Lal, who was driving the earlier said vehicle possessed a driving licence to drive LMV. The taxi caused an accident resulting in death of a girl Anjali Rai, aged 12 years. In *Kusum Rai* the Claims Tribunal relying on *New India Assurance Co. Ltd. v. Kamla*, 2001 ACJ 843 (SC) held that the Insurance

Company cannot get rid of its third party liability. The appeal preferred by the Insurance Company was dismissed by the High Court. The Supreme Court considered its earlier report in *Swaran Singh; Malla Prakasarao v. Malla Janaki & Ors.*, (2004) 3 SCC 343 and held that in these type of cases the owner cannot be allowed to contend that he had no liability to verify the facts whether the driver possessed a valid driving licence or not. Paras 13 to 16 of the report in *Kusum Rai & Ors.* are extracted hereunder:-

“13. In Swaran Singh (2004) 3 SCC 297 to which one of us was a party, this Court noticed an earlier decision of this Court, namely, Malla Prakasarao v. Malla Janaki (2004) 3 SCC 343 wherein one of the members of the Bench, V.N. Khare, J. (as the learned Chief Justice then was) was a member. In that case, it was held:

“It is not disputed that the driving licence of the driver of the vehicle had expired on 20-11-1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of the contract, the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal.”

14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-à-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-à-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating:

“89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are ‘goods carriage’, ‘heavy goods vehicle’, ‘heavy passenger motor vehicle’, ‘invalid carriage’, ‘light motor vehicle’, ‘maxi-cab’, ‘medium goods vehicle’, ‘medium passenger motor vehicle’, ‘motor-cab’, ‘motorcycle’, ‘omnibus’, ‘private service vehicle’, ‘semi-trailer’, ‘tourist vehicle’, ‘tractor’, ‘trailer’ and ‘transport vehicle’. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for ‘motorcycle without gear’, [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for ‘light motor vehicle’ is found to be driving a ‘maxi-cab’, ‘motor-cab’ or ‘omnibus’ for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.”

15. *The matter came up for consideration again before a Division Bench of this Court in National Insurance Corpn. Ltd. v. Kanti*

Devi (2005) 5 SCC 789 wherein this Court upon consideration of the observations made in Swaran Singh opined:

“12. The decision in Swaran Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case.”

16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.”

5. Relying on *Kusum Rai*, this Court in *Future General India Insurance Company Limited. V. Mohd. Ibrahim*, MAC APP.837/2011, decided on 09.10.2012 held that the owner would be liable for breach of the terms of policy if he willfully allows a driver to drive a taxi when he (the driver) possesses a licence to drive LMV (NT). Para 18 of the report in *Mohd. Ibrahim* is extracted hereunder:-

“18. A similar question arose for consideration in National Insurance Company Limited v. Kusum Rai & Ors. (2006) 4 SCC 250; where the driver possessed a licence for driving LMV (NT) and the vehicle driven by him was a taxi which was a commercial vehicle. The Supreme Court held that a taxi (a commercial vehicle) could not be driven on the basis of an LMV (NT) licence. Para 11 of the report is extracted hereunder:-

“11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.”

6. In view of the interpretation of *Swaran Singh* as construed by the Supreme Court in *Kusum Rai* in case of a commercial vehicle taxi involved in the accident, I cannot take a different view.
7. As far as the liability of the Insurance Company to satisfy the award with regard to the third party is concerned, the issue is settled by a three Judge Bench decision of the Supreme Court in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; where while referring to section 96 (2) (b) (ii) of the Motor Vehicles Act, 1939 (the Act) the Supreme Court 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.....”

8. Since the appellant Insurance Company cannot avoid its liability towards third party, I am of the view that the liability of the Insurance Company to satisfy the award in the first instance is statutory. It is bound to satisfy the same and is entitled to recover the amount of compensation paid from

the owner and the driver (Respondents No.4 and 5) 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 Insurance Company.

(G.P. MITTAL)
JUDGE

AUGUST 30, 2013

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