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

Judgment delivered on: 18th December, 2013

+ **MAC.APP. 738/2012 & CM No. 11924/2012**

NATIONAL INSURANCE CO LTD Appellant
Represented by: Mr. Pradeep Gaur, Advocate.

Versus

MANESHWAR DUTT SHARMA AND ORS Respondents
Represented by: Ms. Sumeet Kaur, Advocate for
Respondent Nos. 2 and 3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 738/2012

1. The present appeal is directed against the impugned award dated 01.05.2012, whereby the learned Tribunal has granted compensation for a sum of Rs.2,49,560/- with interest at the rate of 9% *per annum* from the date of filing of the petition till realization.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that driving licence produced by respondent No.1 was found to be fake and a witness from the concerned licensing authority was also examined as R3W2 by appellant to this effect, who had categorically

stated that licence bearing No.20780 was never issued in the name of Dev Kumar, respondent No.2/driver of the offending vehicle. Despite that, the learned Tribunal has not granted recovery rights against the owner and driver of the offending vehicle.

3. He further argued that the learned Tribunal has granted penal interest at the rate of 12% *per annum* from the date of filing of the petition till realization.

4. Learned counsel appearing on behalf of the respondent Nos. 2 and 3 argued that from perusing the record and the impugned award dated 01.05.2012, it is established that respondent No.3, i.e., owner of the offending vehicle has categorically stated that he had seen the driving licence of respondent No.2 and also kept photocopy of the same before handing over the vehicle to him for plying. Respondent No.3 also stated that respondent No.2 was driving the vehicle in a very proper manner, therefore, he had not breached any term and condition of the insurance policy.

5. She further submitted that respondent No.3/owner of the offending vehicle while appointing respondent No.2 as driver, retained the photocopy of his driving licence. Moreover, R1W1 SI Rambir Singh deposed before the learned Tribunal that he had verified the driving licence of respondent No.2 through Constable Malkhan Singh from RTO, Agra and found the same to be valid. Therefore, the learned Tribunal has rightly not granted recovery rights in favour of the appellant/Insurance Company.

6. To support her submissions, learned counsel has relied upon a case bearing **Civil Appeal No. 8276 of 2009** titled as '**Pepsu Road Transport Corporation Vs. National Insurance Company**', wherein the Apex Court has observed as under:-

"5. In United India Insurance Company Limited vs. Lehu and Others[1], a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer. The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer not taking appropriate action to get the same duly verified from the issuing authority. We may extract the relevant paragraphs from the judgment:

"18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It

is for this reason that the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.”

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full

agreement with the views expressed therein and see no reason to take a different view.”

7. In view of the above, it can be safely inferred that the respondent No.3/owner of the offending vehicle had not breached any term and condition of the insurance policy as he had taken all due care and caution while appointing respondent No.2 as driver of the offending vehicle.

8. So far as the issue of penal interest is concerned, the learned Tribunal while awarding compensation has granted interest at the rate of 9% *per annum* from the date of filing of the petition till realization and also directed that in case of default, penal interest at the rate of 12% *per annum* will be paid on the award amount from the date of filing of the petition.

9. I note, while staying the execution of the impugned award dated 01.05.2012 passed by the learned Tribunal, this Court directed the appellant/Insurance Company to deposit the awarded amount alongwith interest at the rate of 9% *per annum* from the date of filing of the petition till the date of deposit with the learned Tribunal, accordingly, the amount has been deposited.

10. Therefore, in view of the above, I quash the impugned award dated 01.05.2012 so far as it relates to penal interest at the rate of 12% *per annum* from the date of filing of the petition.

11. Since the compensation amount has already been released in favour of the respondent No.1/claimant, therefore, no further direction is required.

12. Statutory amount shall be released in favour of the appellant/Insurance Company.

13. The present appeal stands disposed of on above terms.

CM No. 11924/2012 (for stay)

With the disposal of the appeal itself, the instant application has become *infructuous*. The same is accordingly dismissed.

SURESH KAIT, J.

DECEMBER 18, 2013

Sb/jg