

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

+ **MAC.APP. No.507/2008**

% *Judgment reserved on: 14th March, 2013*
 Judgment delivered on: 18th March, 2013

NATIONAL INSURANCE CO.LTD. Appellant
Through: Ms. Manjusha Wadhwa, Advocate.

Versus

MAMTA & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for R1
 to R4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is preferred against the impugned award dated 04.07.2008 passed in suit No. 604/2005 titled as *Smt. Mamta & Anr v. Vishram Yadav & Ors*, whereby the learned Tribunal has directed the appellant to pay Rs.4,80,028/- along with interest at the rate of 7% per annum from the date of filing of the petition.

2. The main ground taken in the instant appeal is that the learned Tribunal has erred by holding that the insurance company being the insurer is liable to pay the compensation and same can be recovered from respondent Nos. 5 and 6.

3. Ms. Manjusha Wadhwa, learned counsel appearing on behalf of the appellant has submitted that the learned Tribunal has recorded in its

impugned judgment that respondent No.5 has committed breach of terms and conditions of policy by providing the vehicle in the hands of respondent No.5, who was not having driving licence to drive the commercial vehicle on the date of accident.

4. She further submitted that the insurance company, in order to prove its case, examined its Assistant Manager Sh. H.P. Singh as R3W2 and Sh. Rakesh Kumar, Licence Clerk as R3W1, who deposed that his office was authorised to issue private driving licence for driving vehicles i.e. car, motorcycle, scooter and jeep. If the vehicle is commercial then the driving licence was to be issued by the Transport Authority. R3W2, Sh. H.P. Singh has proved the insurance policy as Ex. R3W2/A.

5. It is further submitted that learned Tribunal considered the testimony of PW4 Sh. Chetan Chopra, who deposed that he was going to his office on the date of accident by Chevrolet Tavera. As per his testimony, respondent No.5 was driving the offending vehicle for commercial purposes, whereas, was holding license only to drive private vehicle. Therefore, the appellants are not liable to pay any amount in favour of the claimants.

6. Learned counsel has referred the case of ***National Insurance company vs. Swaran Singh and Others*** (2004) 3 SCC 297, wherein the hon'ble Supreme Court has held as under:

“88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted

in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

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 Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of 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. A person possessing a driving licence for 'motorcycle without gear', 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 accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with 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.”

7. She has also relied upon the case decided by the Apex Court in ***Oriental Insurance Company vs. Nanjappan and Ors*** 2005 SCC (Cri) 148 wherein it was held that the insurance company has no liability to pay since the driver was not holding the valid driving licence on the date of accident. It was observed as under:

“Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the

manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.”

8. Learned counsel further submits that if the vehicle is a taxi which is driven by driver holding licence for driving a light motor vehicle only without there being any endorsement for driving transport vehicle then the insurance company cannot be ordered to pay compensation. To strengthen her arguments, she has relied upon the case of ***National Insurance Co. Ltd vs. Smt. Kusum Rai & Ors*** JT 2006 (4) SC 9, wherein it was held as under:

“Although, thus, we are of the opinion that the Appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under Article 136 of the Constitution of India but we direct that the Appellant may recover the amount from the owner in the same manner as was directed in Nanjappan (supra)”

9. Learned counsel has further submitted that the present is a case of invalid driving licence. The driver was not having valid commercial licence, whereas, he was driving commercial vehicle. Therefore, this case is to be considered as he had no driving licence and the insurer is liable to pay compensation.

10. While concluding her arguments, she has informed this Court that the similar issue has been referred to the Larger Bench (Three Judges Bench) in SLP (Civil) No. 11801-11804/2005 in the case of ***Jai Prakash vs. National Insurance Company and Ors***, however, the same is pending for adjudication.

11. Learned counsel appearing for the respondents/claimants submits that judgment in ***Swaran Singh's*** case has been rendered by a Three Judges Bench, wherein has held as under:

“Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

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 have to be so interpreted as to effectuate the said object."

12. I have heard learned counsels for the parties.

13. Undisputedly, the driver of the offending vehicle did not possess a valid licence, therefore, the appellant is not liable to pay any compensation as claimed.

14. However, as has been held in the case of **Swaran Singh** (supra) that the insurance company may not be liable to satisfy the decree, and therefore, its liability may be zero, but it does not mean that it did not have initial liability at all. If the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party from the assured.

15. The right to avoid liability in terms of Sub Section 2 of Section 149 is restricted as has been discussed in the above noted case. It is one thing to say that the insurance companies are entitled to raise a defence

but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. The case in hand is fully covered by the dictum of ***Swaran Singh*** (supra).

16. Moreover, Chapter 11 of Motor Vehicles Act, 1988 providing compulsory insurance of vehicle against third party risk 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 vehicles are with these paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

17. This is an admitted fact that the learned Tribunal has given recovery rights to the appellant to recover the entire amount from the insured.

18. In view of the above discussion and legal position, I find no merit in the instant appeal. Therefore, the same is dismissed with no order as to costs.

19. Consequently, statutory amount of Rs.25,000/- shall be released in favour of the appellant/Insurance Company.

20. Vide order dated 07.11.2008, the appellant was directed to deposit the entire award amount along with interest with Registrar General of this Court who was further directed to keep the amount in FDR initially for a period of one year.

21. Thereafter, vide order dated 13.05.2009 passed by this Court, the Registrar General was further directed to transfer/remit the entire

award amount along with up to date interest to the learned Tribunal. The learned Tribunal was further directed to release the award amount to the claimant in terms of the award, except the amount directed to be kept in the fixed deposit.

22. Therefore, the learned Tribunal is directed to release the compensation amount in favour of the respondents/claimants in terms of the order dated 04.07.2008 passed by it.

SURESH KAIT, J.

MARCH 18, 2013

‘raj’/RS