

\$~

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

+ **MAC.A. No. 944/2011 & CM No. 19637/2011 (for stay)**

% *Judgment delivered on: 11th October, 2013*

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

Versus

SURESH CHAND & ORS. Respondents
Represented by: Mr. Radhey Shyam Singh, Adv.
For R1 and 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal has been preferred by the appellant/Insurance Company by assailing the impugned order dated 24.08.2011, whereby the learned Tribunal has granted a compensation for a sum of Rs.3,75,000/- with interest @ 7.5% *per annum* from the date of filing of the petition till the date of realization of the amount in favour of the claimants.
2. In the present appeal, the appellant seeks exoneration from any liability for the reason that the driver of the offending vehicle was not having a valid driving licence on 07.10.2005, i.e., the date of accident.
3. Ld. Counsel appearing on behalf of the appellant submits that when there is no valid driving licence in that eventuality the Ld.

Tribunal ought to exonerate the appellant from any liability whereas the Ld. Tribunal has failed to do so in the present case.

4. The facts of the case are that on 07.10.2005 at about 6.30 pm, the deceased was going from Mandir towards her house, all of a sudden a scooty bearing no. DL-3SAR-4885 being driven by respondent no.1 rashly and negligently at a high speed hit the female child. Due to the impact, she received multiple injuries and died on 13.10.2005.

5. Ld. Counsel further submitted, the appellant examined R3W1 Rohtash Singh, LDC Seikh Sarai Authority and R3W2 Manohar Lal, Dy. Manager of the appellant company. The aforesaid witnesses deposed that respondent no.3 was holding a licence for Light Motor Vehicle only but she was driving scooty at the time of accident, thus, violated the terms and conditions of the policy. In that eventuality the Ld. Tribunal ought to have exonerated the appellant from any liability, however, held it liable to pay the compensation.

6. I note, respondent no.3 and 4, i.e. driver and owner were proceeded ex parte before the Ld. Tribunal. They have been served by citation in the present appeal despite that none appeared on their behalf.

7. The driving licence of the driver is proved on record as Exhibit R3W1/1. As per the said licence, the driver was entitled to drive LMV(NT). R3W1 Rohtash Singh, LDC Seikh Sarai Authority has deposed that licence bearing no. P0305200336345 was issued to Ms. Gunjan Satija on 19.05.2003 and was valid upto 18.05.2023 for LMV (NT).

8. The Ld. Tribunal has failed to appreciate that Section 10 of the Motor Vehicle Act, 1988, which prescribes forms and contents of the licences for driving and sub section 2 provided that a learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c)

9. Thus, under section 10 of the Motor Vehicle Act, motor cycle with gear or without gear is a separate category of vehicle than LMV(NT). Thus, a person holding driving license for LMV(NT) is not entitled to drive scooty which falls under the category of motor cycle without gear.

10. Section 2(10) of M.V. Act, 1988 defines driving licence. Section 3 prescribes necessity for driving license and Section 10(2) (a) and (b) as reproduced above prescribes forms and contents of license to drive.

11. In a case of ***New India Assurance Company Ltd. vs. Roshanben Rahemansha Fakir and Anr.*** 2008 Ind Law SC 813 the Apex Court has held that possession of an effective licence is necessary in terms of Section 10 of the Motor Vehicles Act.

12. Vide the instant appeal, the appellant seeks exoneration from any liability. A similar issue came before this Court in a case titled as ***Santosh Chabra & Ors. vs. Abhishek Gureja & Ors.*** in MAC Appeal No.805/2010 decided on 04.10.2013, wherein held as under:-

“21. Law is settled on the issue of no licence, fake

licence or invalid driving licence in the case of New India Insurance Company Ltd. v. Darshana Devi 2008 ACJ 1388. The offending vehicle at the time of accident was being driven by son of the owner of the vehicle, who was not holding any licence to drive the same. Ld. Tribunal, while awarding the compensation held that the amount shall be payable by the insurer initially, however, the insurer will be at liberty to recover the same from the owner of the offending vehicle. The award passed by Ld. Tribunal was challenged by the Insurance Company, same was affirmed by the High Court and also upheld by the Supreme Court.

22. In New India Assurance Co. Ltd. v. Kamla and Ors. etc. 2001 ACJ 843, wherein it is held as under:

“The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence..”

23. In National Insurance Co. Ltd. v. Swarn Singh, 2004 ACJ 1 while deciding the issue of driving licence, the Apex Court has held as under:

“(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving

licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

In V. Mepheron vs. Shiv Charan Singh [1998 ACJ 601 (Del.)], the the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.”

24. In *Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.*, 2012, ACJ, 1268, the Coordinate Bench of this court in Para 44 has held as under:

“44. (ii) Even when there is a willful breach of the terms of the policy under Section [149 \(2\) \(a\)](#) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires the owner and driver to

produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void under Section 149 (2) (b) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is non est."

25. No doubt, the respondent no. 3 / insurance company successfully proved that there was breach of terms and conditions of the policy, mere breach of the conditions of the policy would not entitle the insurance company to avoid its liability against the insured.

26. In the present case, the offending vehicle is admittedly an insured vehicle, limited to the terms of the policy of insurance, the insurance company is duty bound to take over the contractual liability of the assured and pay the sum awarded to the claimants by the Ld. Tribunal.

27. The provisions of sub-section 4 and 5 of the Section 149 of Motor Vehicles Act, 1988 may be considered as to the liability of the insurer to satisfy the decree at the first instance."

13. In the instant case, admittedly, the offending vehicle was insured

at the time of the accident, therefore, the Insurance Company is contractually liable to pay the compensation to the claimants at the first instance and recover the same from the owner of the offending vehicle.

14. Therefore, keeping in view the settled law and the facts and circumstances of the case, it is established that the driver of the offending vehicle was not having licence strictly in terms of Section 10 (2) (a) and (b) of MV Act. Therefore, the appellant is entitled for recovery and accordingly recovery rights are given in favour of the appellant and against the respondents no. 3 & 4.

15. Vide order dated 24.10.2011, this Court stayed the execution of the award dated 24.08.2011 subject to deposit of the award amount with the Registrar General of this Court.

16. The Registrar General is directed to release the compensation amount in favour of the respondents/claimants in terms of the award dated 24.08.2011.

17. The present appeal is allowed on above terms with no order as to costs.

18. The statutory amount be released in favour of the appellant/Insurance Company.

19. TCR be sent back to the concerned Tribunal.

CM No.19637/2011

Dismissed as infructuous.

SURESH KAIT, J.

OCTOBER 11, 2013
RS