

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

Date of decision: 9th January, 2013

+ **MAC APP. 703/2010**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. D.D. Singh Adv. with
Mr. Navdeep Singh, Adv.

versus

RAM ASHISH SINGH & ORS. Respondents

Through: Mr. S.N. Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant United India Insurance Company Limited impugns a judgment dated 28.08.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹50,392/- in favour of Respondent No.3, it rejected the Appellant's plea that it had successfully proved the breach of the terms and conditions of the policy.
2. The quantum of compensation is not challenged by the Appellant Insurance Company. While dealing with the issue of liability, the Claims Tribunal held as under:-

“18. It has been submitted by the insurance company that the driving license of the driver of the offending car was found fake on inquiry. The Insurance Company in support of its defence has also summoned witness from the office of Licensing Authority

Muradabad from where the driving license of the driver of the car was purportedly issued which was produced by the driver to the police and seized by the police. According to R3W2 Sh. Shaym Narain Singh appearing from Muradabad Regional Transport Office who was shown the copy of the DL of the driver produced by him to the police this driving license was not issued from the Regional Transport Office Muradabad and according to him the particulars of this driving license Ex. R3W1/C does not match with the record produced by him in the Court.

19. In the present case police has seized the DL of the driver of the offending car bearing DL No. T-9640 with date of issue on it as 21.6.2003 in the name of R1 Ram Aashish Singh issued by Regional Transport Office Muradabad. R3W2 however, produced the record being maintained in the office of Transport Authority during the relevant period from 20.6.2003 to 23.6.2003 where this driving license Ex.R3W1/C does not match with the particulars of the record being maintained in the office of Regional Transport Authority Muradabad.

20. The relevant question for consideration is whether the evidence led by the Insurance Company be taken as sufficient to absolve the Insurance Company from holding responsible to make the payment of the compensation under Section 149 MV Act. In the present case admittedly the vehicle was insured with the Insurance Company. Under Section 149 MV Act the Insurance Company may be absolved with liability from making the payment in case of the violation of terms and conditions of the Insurance Policy. In the present case Insurance Company was not only to prove the fact that the driving license was fake but was also to prove the fact that the owner of the offending vehicle was also aware of this position and despite that had continued with the service of the driver for the offending vehicle. No evidence of the insurance company has been led to prove the second part. The Insurance Company has not made any efforts to prove the fact that driving license of R1 was fake was within the knowledge of R2 or R2 was otherwise aware of the same. The Insurance Company did not summon the R2 to appear as a witness. No notice has been served by the Insurance Company upon the owner or the driver to explain about this position. As a result no inference can be drawn that R2 was having

knowledge of fake driving license of R1 as proved by R3W2. Since R2 was not aware of this fact situation, therefore, the responsibility of the payment would continue with Insurance Company alone. Support may be derived from the judgment in Prem Kumari V. Prahlad Dev 2008 ACJ 776 (SC) where it was laid down that by proving that the driver was having fake license would not absolve the insurer. It was to be proved that the owner was having knowledge that the driver is holding a fake license but still permitting him to drive the vehicle. It was held that in case where the license was fake, the insurance company would continue to remain liable unless they prove that the owner was aware and noticed that the license was fake and still permitted him to drive.”

3. Admittedly, no notice under Order XII Rule 8 CPC was served upon Respondents No.1 and 2, that is, the driver and the owner of car No.UP-14-AH-9962 involved in the accident. From the testimony of R3W2 Sh. Shyam Narain Singh it was established that the driving licence Ex.R3W1/C was not issued by the earlier said authority and that the same was fake. The only question to be seen is whether the owner was put to notice regarding the fact that the driving licence relied upon by the owner was fake and if he had any explanation for the same.
4. The Trial Court record reveals that a joint written statement was filed by Respondents No.1 and 2 (i.e. the driver and the owner) on 24.07.2008. The written statement was filed by the Appellant (Respondent No.3 before the Claims Tribunal) on 18.12.2008. A specific plea was taken in the written statement that the driving licence No.T-9640 dated 21.06.2003 issued by the Licensing Authority, MV Department, Muradabad was fake. Although, Respondents No.1 and 2 were being duly represented by their counsel, they preferred not to rebut the averments made in Para 3 (c) of the preliminary objection of the written statement filed by the Appellant. Thus, Respondents No.1 and 2 had notice the Appellant's plea

that it wanted to avoid liability on account of breach of contract for violation of the terms and conditions of the policy. The averments made in the written statement were left uncontroverted. The Appellant produced R3W2 Shyam Narain Singh from Muradabad, Regional Transport Office who deposed that the driving licence Ex.R3W1/C purported to be issued in the name of Ram Aashish Singh son of Sh. Uma Shanker Singh was not issued from their office and that it was false driving licence. In cross examination, the testimony of this witness was not seriously challenged by Respondents No.1 and 2. The Appellant Insurance Company, therefore, discharged the onus of proving the breach of the terms and conditions of the policy. Now, it was for the owner (that is Respondent No.2) to have come forward and show that he took adequate steps to avoid the breach of the terms and conditions of the policy.

5. I am supported in this view by a judgment of the learned Single Judge of this Court in *New India Assurance Co. Ltd. v. Sanjay Kumar and Ors.*, *ILR 2007(II) Delhi 733*, wherein it was held that although the onus is on the Insurer to prove that there was breach of condition of the policy, but once the record of the Licensing Authority is summoned to prove that the driver did not possess a valid driving licence, the onus would shift on the Insured (the owner of the vehicle) who must then step into the witness box and prove the circumstances under which he acted and handed over the vehicle to the driver. Paras 22 to Para 24 of the report are extracted hereunder:-

“22. Thus, where the insurance company alleges that the term of the policy of not entrusting the vehicle to a person other than one possessing a valid driving licence has been violated, initial onus is

on the insurance company to prove that the licence concerned was a fake licence or was not a valid driving licence. This onus is capable of being easily discharged by summoning the record of the Licencing Authority and in relation thereto proving whether at all the licence was issued by the authority concerned with reference to the licence produced by the driver. Once this is established, the onus shifts on to the assured i.e. the owner of the vehicle who must then step into the witness box and prove the circumstances under which he acted; circumstances being of proof that he acted bona fide and exercised due diligence and care. It would be enough for the owner to establish that he saw the driving licence of the driver when vehicle was entrusted to him and that the same appeared to be a genuine licence. It would be enough for the owner, to discharge the onus which has shifted on to his shoulders, to establish that he tested the driving skill of the driver and satisfied himself that the driver was fit to drive the vehicle. Law does not require the owner to personally go and verify the genuineness of the licence produced by the driver.

23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breached the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.

24. That apart, what more can the insurance company do other than to serve a notice under Order 12 Rule 8 of the Code of Civil Procedure calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company.”

6. In view of the above, the Appellant Insurance Company has successfully proved the willful breach of the terms and conditions of the policy.

7. It is well settled that once the insurer establishes a willful breach of the terms of the policy on the part of insured, it shall have the right to recover the compensation paid to the victim/his legal representatives under statutory liability. (See: *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654; and *New India Assurance Co., Shimla v. Kamla and Ors.*, (2001) 4 SCC 342).
8. In view of the foregoing discussion, the Appeal is allowed and the Appellant Insurance Company is granted recovery rights to recover the compensation from the owner of the offending vehicle, that is, Ram Avtar Sharma, Respondent No.2.
9. The compensation deposited shall be released in favour of Respondent No.3 in terms of the order passed by the Claims Tribunal.
10. The Appeal is allowed in above terms.
11. The statutory deposits of ₹25,000/- shall be refunded to the Appellant Insurance Company.
12. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 09, 2013

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