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

Judgment delivered on: 13th November, 2013

+ **MAC.APP. 1004/2013 & CM Nos.17550/2013, 17551/2013**

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant

Represented by: Mr.Pankaj Kumar, Advocate.

Versus

DIVYA KHANIJA & ANR.

..... Respondents

Represented by: None.

AND

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+ **MAC.APP. 1014/2013 & CM Nos.10670/2013, 10671/2013**

SHRIRAM GENERAL INSURANCE COMPANY LTD.... Appellant

Represented by: Mr.Pankaj Kumar, Advocate.

Versus

SHUBHAM & ANR.

..... Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM Nos. 17551/2013 in MACA No. 1004/2013 & 10671/2013 in MACA No. 1014/2013 (both for exemption)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

MAC.APP. Nos. 1004 & 1014 of 2013

1. By way of the appeals noted above , the appellant/Insurance Company has challenged the common impugned award dated 01.08.2013 passed by the learned Tribunal, whereby a sum of Rs.2,75,586/- was awarded in Claim Petition No.49/11 and a sum of Rs.30,500/- was awarded in Claim Petition No.276/12 in favour of the claimants/respondents. Interest at the rate of 7.5% *per annum* was also awarded from the date of filing of the petition till realization.

2. Since these appeals have been arisen from the accident occurred on 23.05.2011 and the common impugned judgment dated 01.08.2013, therefore, both the aforetoed appeals are being disposed of by common judgment.

3. In both these appeals, the only issue raised by the appellant/Insurance Company to be considered by this Court is that the driver of the offending vehicle was not having any driving licence on the date of the accident and in that eventuality; the learned Tribunal ought to have exonerated the appellant/Insurance Company from any liability

4. Similar issue came before this Court in the case bearing MACA No. 805/2010, titled as ***Santosh Chhabra & Ors. Vs. Abhishek Gureja & Ors.*** decided on 04.10.2013, wherein it is 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 Id. 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. Mepherston 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.”

5. Keeping in view the settled legal position, I do not find any merit in the instant appeals. The same are dismissed accordingly.

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

CM Nos. 17550/2013 in MACA No. 1004/2013 & 10670/2013 in MACA No. 1014/2013 (both for exemption)

With the dismissal of the aforementioned appeals, these applications have become *infructuous*. The same are accordingly dismissed.

SURESH KAIT, J.

NOVEMBER 13, 2013/sb