

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

Reserved on: 31st October, 2012
Pronounced on: 24th January, 2013

+ **MAC.APP. 844/2010**

SACHIN SINGH & ANR. Appellants
Through: Mr. Niraj Jha, Adv. with
Mr. Manish Maini, Adv.
versus

RELIANCE GENERAL INSURANCE COMPANY LTD. & ANR.
.... Respondents
Through: Ms. Shivani Bansal, Adv.

+ **MAC.APP. 846/2010**

SACHIN SINGH & ANR. Appellants
Through: Mr. Niraj Jha, Adv. with
Mr. Manish Maini, Adv.
versus

RELIANCE GENERAL INSURANCE COMPANY LTD. & ORS.
.... Respondents
Through: Ms. Shivani Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These Appeals arise out of a judgment dated 31.07.2010 whereby the Motor Accident Claims Tribunal (the Claims Tribunal) while awarding compensation in favour of the Respondents (the Claimants) held that the insured (Respondent Ajay Pal) the owner of the offending vehicle

committed breach of the terms and conditions of the policy by permitting its driver, Sachin Singh to drive it without a valid permit.

2. The issues of negligence and quantum of compensation is not disputed by the Appellants, thus, the same have attained finality.
3. While dealing with the issue of liability, the Claims Tribunal held as under:-

“Counsel for the insurance Company stated that the Insurance Company is entitled to recovery rights since there is violation of the condition of the permit. A perusal of the testimony of R3W1 who has appeared for Transport Authority, Faridabad clearly mentioned that though the permit holder had a national permit valid till the year 2011 subject to tax being paid per annum for authorization of that permit to ply in the state of Delhi. He has clearly stated that on the date of accident since the required tax and fee had not been paid by the permit holder, therefore on the date of accident the permit was not valid to ply the vehicle in the state of Delhi. Since the bus was being plied without valid permit for that particular year at the time of accident and tax has not been paid by the permit holder which is a further decision for renewing the validity of the national permit. Therefore, I am inclined to grant recovery rights to the Insurance Company.”

4. In the written statement filed by the Respondent Insurance Company it was stated that the offending vehicle was permitted to be driven on the route without a valid and effective route permit and fitness certificate. The Respondent Insurance Company, therefore, asserted that it would be entitled to avoid liability.
5. In order to prove breach of the terms and conditions of the policy, the Respondent Insurance Company examined Naresh Kumar R3W1, Stenotypist, Office of Secretary RTA Faridabad because the offending vehicle

was registered with the earlier said Transport Authority. It would be appropriate to extract the testimony of R3W1 herein for ready reference:-

“Today I have brought the summoned record i.e. permit of vehicle No.HR 38M7820 permit No.4056/NP/06 issued in the name of Sh. Ajay Pal, S/o Sh. Jagdish which was issued on 17.05.2006 to 16.05.2011. This permit is authorized for UP, Delhi and Chattisgarh for the period 17.05.2007 to 16.05.2008. Authorisation permit was not renewed after 16.05.2008. It is correct after 16.05.2008 this national permit was not valid to ply the said vehicle in Delhi State. Photocopy of the same is Ex.R3W1/1 and Ex.R3W1/2 (original seen and returned).

XXXXX by Sh. Sudesh Mahal, Counsel for R1 & R2.

The permit of the said vehicle had been issued on 17.05.2006 and it was valid upto 16.05.2001. The permit requires authorization if the permit holder wants to ply the vehicle in the states as per his wishes. The said permit was not valid on the date of 14.05.2009 to ply in Delhi, as the same was not issued to ply in the Delhi State. By receiving composite tax with penalty the vehicle is even than not authorized for the break period and the same will be considered effective on the date of application for the renewal of the permit.

XXXXX by Sh. Yogesh Kumar, Counsel Sh. Ram Naresh, Petitioner in Suit No.327/2008.

It is correct that according to the national permit No.4056 issued by concerned Authority is valid upto 16.05.2011 and the same vehicle can be plied within all the territories of India. Vol. Subject to the condition authorization permit is valid.l

XXXXX by Sh. Bipin Jha, Counsel for Petitioner.

Nil Opportunity given.....”

6. Thus, the Appellant owner did have a national permit but that permit would become effective only when an authorization fee to ply the vehicle in that State is paid. R32W1 was categorical that the national permit which was issued on 17.05.2006 till 16.05.2011 was authorized for the

States of U.P., Delhi and Chattisgarh for the period 17.05.2007 to 16.05.2008. Since the necessary fee for authorization for the State of Delhi was not paid after 16.05.2008 the vehicle shall be deemed to be without a valid permit, if it is plied in the State of Delhi.

7. It is urged by the learned counsel for the Appellants that the payment of authorization fee was merely a formality and thus, it cannot be said that for want of payment of authorization fee, the vehicle shall be deemed to be without a valid permit. It is true that the payment of authorization fee is only a formality but the permit becomes effective for a particular State on payment of the prescribed fee. If the prescribed fee is not paid the vehicle shall be treated as being plied without a valid permit.
8. However, there is another aspect of the matter with regard to avoiding liability. The provisions of the Act and the terms of insurance with regard to avoidance have to be strictly construed. Section 149 (2) of the M.V.Act empowers an insurer to avoid the contract of insurance as specified in sub-Section (2) provided the said condition has been specified in the contract of insurance. It would be apposite to extract sub-Section 149 (2) hereunder for ready reference:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1)

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to

whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. ” (emphasis supplied)

9. It is well settled that the initial onus to prove that there is breach of the terms and conditions of the policy is on the insurance company. In *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, while relying on *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, *Skandia Insurance Company Limited v.*

Kokilaben Chandravadan ,(1987) 2 SCC 654 and *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21, the Supreme Court held as under:-

“69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi (1996) 5 SCC 21).”

10. A close reading of Section 149 (2) of the M.V. Act makes it crystal clear that there is twin obligation on the insurer to prove the breach. First, it must prove that there is a breach as is mentioned in Section 149 (2) (a) (i) (a) (b) (c) (d) or Section 149 (2) (ii) (iii) of the M.V. Act. Second, these conditions must be part of the contract of insurance. In other words, an insurer is entitled to avoid the contract of insurance only by specifying the conditions as laid down in Section 149 (2) of the M.V. Act.
11. In the instant case, the insurance policy was not proved by the Respondent Insurance Company. The Appellants, however, proved the cover note as Ex.R2W1/2 which does not contain any condition that if the vehicle was used for the purpose not allowed by the permit for which the vehicle is used, the Insurance Company would be entitled to avoid the contract of insurance. The insurance policy having not been proved by the Respondent Insurance Company and the cover note Ex.R2W1/2 failing to show that there was any such condition as is claimed to have been breached by the insured, the Respondent Insurance Company will not be permitted to avoid the contract of insurance.

12. In this view of matter, the order passed by the Claims Tribunal to the extent it grants recovery rights against the Appellants is liable to be set aside. I order accordingly.
13. The Appeals are allowed in above terms.
14. Pending Applications also stand disposed of.
15. The statutory deposit of ₹25,000/- shall be refunded to the Appellants.

(G.P. MITTAL)
JUDGE

JANUARY 24, 2013

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