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

Date of decision: 27.08.2014

+ MAC.APP. 188/2013

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through Mr.J.P.N.Shahi, Advocate.

versus

AVINASH ARYA & ORS. Respondents

Through Mr.Alok Kumar Mishra, Advocate for
R-1.
Mr.Aatriya Alagh, Advocate for R-3.

+ MAC.APP. 189/2013

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through Mr.J.P.N.Shahi, Advocate.

versus

SUMAN KUMARI ARYA & ORS. Respondents

Through Mr.Alok Kumar Mishra, Advocate for
R-1.
Mr.Aatriya Alagh, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Both these appeals arise out of a common accident relating to different claim petitions.
2. Brief facts are that on 04.05.2011 respondent No.1 in MAC APP. 188/2013 Mr.Avinash Arya was going on his motor cycle along with his mother Smt. Suman Kumari Arya who is respondent No.1 in MAC APP

189/2013. They were hit by a Tavera car and received injuries due to the accident.

3. Based on the evidence of parties, the Tribunal concluded that the claimants suffered injuries in the road accident due to rash and negligent driving of the offending vehicle.

4. On compensation, the claimant/respondent No. 1 in MAC APP. 188/2013 was awarded Rs.1,18,231/- and the other claimant/respondent No. 1 in MAC APP 189/2013 was awarded Rs.1,26,365/-.

5. Regarding apportionment of liability, the Tribunal noted that as per the report of the investigating officer of the police, the driving license of respondent No.2 was fake. Respondents No.2 and 3 led no evidence to rebut this fact. The Tribunal noted the evidence of Sh.Pradeep Kumar, Transport Executive of respondent No.3/R2W1 who stated in his affidavit that before taking into employment the driving skills of respondent 2 were checked and after being satisfied and believing that his driving license to be genuine he was employed with respondent No.3. The tribunal relying on the judgment of the Supreme Court in the case of ***United India Insurance Co. Ltd v. Lehu AIR 2003 SC 1292*** directed the appellant to pay the award amount.

6. Learned counsel appearing for the appellant submits that after the Tribunal concluded that the driving license was fake, the Tribunal ought to have awarded recovery rights to the appellant from respondents No.2 and 3, namely, the driver and owner of the offending vehicle. He relies on the judgment of the Supreme Court in the case of ***United India Insurance Co. Ltd. vs. Sujata Arora***, an order passed on 10.01.2012 in Civil Appeal No. 231/2012.

7. I will now deal with the said submission of the appellant. R2W1 Shri. Pradeep Kumar has deposed in his affidavit by way of evidence as follows:-

“3. That at the time of taking into employment, the driving skill of the respondent No.1 was checked and after getting satisfied and behaving his driving licence to be a genuine one, he was employed with the respondent No.2.

8. In his cross-examination he has said as follows:-

“Q. I say that you are giving false information in para 3 of your evidence by way of affidavit?

A. As per company record all the drivers who are employed first their driving skill is tested then we keep a copy of driving license of said driver as well as his identity proof. Then we find out from supervisor of our company who has taken the driving skill test and if he says yes, driver knows driving, we engage him. Accident has taken place after more than one year of employing the driver. It is normal practice in our company to test driving skills of a driver before engaging him.

We have an old driver who is in our employment for more than 9 years. He is given the task of testing driving skills of all the drivers. However, said driver/Supervisor Sh. Ram Niwas is not authorised by any Licensing Authority to test driving skills of a person. Normally after driving test employment is given after seven to ten days of the test, Driving licenses of some of the drivers were verified from Licensing Authority but driving licenses of few other drivers were not verified from Licensing Authority.”

9. In view of the above it would follow on facts that respondent No.3 has been able to show that it took adequate care and precaution to ensure that respondent No. 2, the driver of the offending vehicle had a valid driving license and had the requisite driving skills for driving the offending vehicle.

10. Reference may be had to the judgment of the Supreme Court in the case of *National Insurance Company Limited vs. Swaran Singh & Ors*, (2004)3 SCC 297 where in paragraph 110 the Court held as follows:-

“110 The summary of our findings to the various issues as raised in these petitions are as follows:-

- (i) ...
- (ii) ...
- (iii) The breach of policy condition e.g. disqualification of the 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 the 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.

11. The Supreme Court in the case of *National Insurance Company Ltd. vs. Geeta Bhat, AIR 2008 SC 1837* held that in case of a driving license of a professional driver is concerned, the owner of the vehicle despite taking reasonable care might not be able to find out as to whether the license was fake. The owner is not expected to verify the genuineness thereof from the transport office.

12. In the light of the above legal position, and the facts as stated by R2W1, it would be apparent that the liability cannot be transferred to respondent No.3 and in terms of the policy given by the appellant it would have to indemnify the owners against any loss suffered by the owner on account of the accident.

13. It may be noted that regarding the judgment passed by the Supreme Court in the case of *United India Insurance Co. Ltd. vs. Sujata Arora*

(*supra*), a perusal of that judgment shows that on facts it does not appear as if any plea was raised by the owner of the vehicle of having taken any precaution to find out as to whether the driver had the requisite driving skills and whether the license was properly checked by the owner. These facts appear to have not been brought on record. It was in these facts that the Supreme Court held that the liability on the Insurance Company cannot be upheld if the driver had a fake driving licence.

14. There is no merit in the present appeals. The same are dismissed.

15. It may be noted that the appellant has already complied with the Award and the respondent/claimant has already received the awarded amount.

16. The Statutory amount deposited by the appellant may be refunded to the appellant in both the appeals.

JAYANT NATH, J

AUGUST 27, 2014

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