

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

Date of decision : October 14, 2014

+ **MAC.APP. 339/2005**

NATIONAL INSURANCE CO. LTD. Appellant
Through **Ms.Manjusha Wadhwa, Adv.**

Versus

SANJAY SINGHARIA & ORS. Respondents
Through **Mr.O.P.Mannie,Adv. for R-1**
Mr.Bharat Bhushan, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J(Oral):

1. The present appeal is filed by the appellant/insurance company seeking to impugn the Award dated 25.1.2005. The brief facts are that the claimant on 16-01-2004 was driving his two wheeler scooter at Sat Nagar from Raiger Pura. At about 8.00 pm at Karol Bagh a Matiz Car said to be reversed at a very high speed in a rash and negligent manner hit the two wheeler of the claimant/respondent No.1. The respondent No.1 suffered injuries and was hospitalized in Sir Ganga Ram Hospital. He was discharged on 20.01.2004. Based on the evidence on record the Tribunal concluded that the accident was caused due to the rash and negligent driving of respondent No.2.
2. On compensation the Tribunal awarded Rs.17,000/- towards loss of income, Rs.10,000/- towards cost of future treatment and Rs.20,000/- towards pain and agony. Total compensation of Rs.1,25,0000/- was awarded.

3. Learned counsel appearing for the appellant strenuously submits that respondent No.2 was a minor and had no driving license. She relies on the judgment of the Supreme Court in the case of ***Jawahar Singh vs. Bala Jain and others, AIR 2011 SC 2436*** and ***United India Insurance Company Limited vs. Rakesh Kumar Arora and others, (2008) 13 SCC 298*** to contend that as respondent No.2 was driving without a driving license the appellant insurance company has no liability and the liability has to be borne by respondent No.2 the driver or her father the owner of the offending vehicle, namely, respondent No.3.

4. Learned counsel appearing for the respondents have sought to rely upon the judgment of the Supreme Court in the case of ***United India Insurance Co. Ltd. vs. Lehu & Ors., (2003) 3 SCC 338*** and ***National Insurance Company Limited vs. Swaran Singh (supra)***.

5. A perusal of the Award shows that the Tribunal noted the testimony of PW-3 the claimant/respondent No.1. The said PW-3 has said that the Matiz car was driven by a lady who reversed it with full force and without giving any signal or horn hit the scooter from the right side on account of which he fell down. The wheel of the car climbed over his right leg resulting in fracture. A girl is said to have come out of the car and apologised. He is stated to have noted the number of the car and was shifted to hospital. The Tribunal also noted the evidence of respondent No.2 R1W1 who has denied her liability and also the evidence of respondent No.3 the owner of the offending vehicle as R2W1. The Tribunal noted that statements of R1W1 and R2W1 were contradictory to the averments in the written statement and appear to be an attempt to improve their case. Based on the testimony of PW-3 the claimant

and the FIR, the Tribunal concluded that there is sufficient evidence to show rash and negligent driving by respondent no. 9.

6. On the issue of liability, however, the Tribunal noted the evidence of respondent No.3, namely, that he was not at home and was informed about his car having been taken away without his consent. Hence, the Tribunal relying on the judgment of the Supreme Court in the case of *National Insurance Company Limited vs. Swaran Singh & Ors, (2004)3 SCC 297* held as the respondent was a prudent person no liability could be fastened on the said respondents No.2 and 3. The Tribunal concluded that respondent No.3 had not wilfully permitted respondent No.2 to drive the car and hence the appellant/insurance company cannot avoid its liability.

7. A perusal of the evidence of PW-3 (respondent No.1) shows that he saw the girl coming out of the car after the accident and she apologised to him. He states that he noted the car number. There is nothing in the cross-examination of the said witness which would throw any doubt on his evidence. In fact what he has narrated is a normal reaction immediately after such an accident. He states as follows:-

“I shouted when I fell on being first hit by car. Vol. I also hit the car by my hand despite which the car hit me the second time.”

8. Based on the above evidence it is clear that there is nothing to contradict the evidence of PW-3/Respondent No.1.

9. The Tribunal accepted the version of respondent No.1/claimant in paragraph 16 as follows:-

“16. The respondent No.1(Resp. No. 2 herein) as well respondent No.2(Resp. No. 3 herein) have thus, deposed in

their respective testimony that the car was not being driven by respondent no.1. at the time of accident but was being driven by the driver of respondents. In the written statement, however, all that was stated was that the car was standing outside the shop and was stationary when the scooter had hit the stationary car. It was further asserted that at the time of the accident the car was not being driven by respondent no.1. It was not the case of the respondents that at the time of accident the car was not in the possession of respondent no.1 or that she was not present on the spot where the accident took place. In fact the FIR, copy of which is Ex.PW2/1 has been registered on the statement of petitioner himself wherein, it is clearly mentioned in the FIR that respondent no.1 was found standing next to the car which clearly establishes the presence of respondent no.1 on the scene of accident. In fact, this fact is not even denied in the written statement, as has already been discussed above. The respondents for the first time in their testimony have set up a defence that the vehicle was being driven by its driver.”

10. On the issue of liability, reference may be had to the judgment of the Supreme Court relied upon by the appellant, namely, ***Jawahar Singh vs. Bala Jain and others(supra)***. That was a case where the deceased was driving a two wheeler scooter. The said two wheeler scooter was hit by a motorcycle said to be driven by Jatin. The owner of the motorcycle has said that Jatin his nephew had taken the motorcycle without his knowledge or consent and had taken the keys of the motorcycle without his permission. It was noted that Jatin did not have a valid driving license and that he was a minor at the time of the accident. The Supreme Court held that as Jatin, the nephew of the petitioner had no license and in fact was a minor there was no reason to interfere in the order of the High Court and in the award of the Tribunal which had directed the insurance company to pay the said amount at the first instance and

gave recovery rights against the petitioner/owner of the vehicle. The Supreme Court in paragraph 11 noted as follows:-

“11. .. However, since Jatin was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that his motorcycle was not misused and that too by a minor who had no license to drive the same., the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.”

11. Similarly, *United India Insurance Company Limited vs. Rakesh Kumar Arora and others (supra)* pertained to a case where the driver of the offending vehicle was a minor and the Supreme Court noted as follows:-

“Section 4 of the Motor Vehicles Act prohibits driving of a vehicle by any person under the age of eighteen years in any public place. Section 5 of the Act imposes a statutory responsibility upon the owners of the motor vehicles not to cause or permit any person who does not satisfy the provisions of Sec.3 or 4 to drive the vehicle.

The vehicle in question admittedly was being driven by Karan Arora who was aged about fifteen years. The Tribunal, as noted hereinbefore, in our opinion, rightly held that Karan Arora did not hold any valid license on the date of accident, namely, 5.2.1997.

The learned single Judge as also the Division Bench of the High Court did not put into themselves a correct question of law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.”

12. In that case also recovery rights were given to the insurance company.

13. Coming to the judgment relied upon by learned counsel for respondents No.2 and 3, I need not deal with the judgment in the case of ***United India Insurance Co. Ltd. vs. Lehru & Ors. (supra)*** as that case dealt with a situation where the license of the driver of the car was fake. Hence, facts of that case and this case are entirely different. Even in that case it was held that the insurance company to avoid its liability has to prove that the driver was not having a license and that the owner/insured was aware that the license was fake and still permitted the person to drive. There would be a material difference between a fake license which could deceive the owner and a case of minor driving the motorcycle without any license.

14. In that case of ***National Insurance Company Limited vs. Swaran Singh (supra)*** in paragraph 110 the Supreme Court noted 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, has 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.

15. That was also a case of fake and invalid driving license. On the facts of this case the above judgment would not apply.

16. Keeping in view the above judgments of the Supreme Court in the cases of *Jawahar Singh vs. Bala Jain and others (supra)* and *United India Insurance Company Limited vs. Rakesh Kumar Arora and others, (supra)* the appeal of the appellant is partly allowed. On compliance of the award the appellants shall be entitled for recovery rights against respondent No.3 the owner of the offending vehicle.

17. The appellants have already as per order of this court dated 26.4.2005 deposited the award amount with the Tribunal. 50% of the said amount was directed to be released to respondent No.1. In case the award amount has been deposited with the Tribunal the balance amount be released to the claimant/respondent No.1. In case for some reason balance amount has not been deposited by the respondent with the Tribunal, the appellant shall deposit the balance award amount with up to date pendente lite interest as directed by the Tribunal within four weeks before the Tribunal. Upon receipt of the said amount the same shall be released to the claimant/respondent No.1.

JAYANT NATH, J

OCTOBER 14, 2014

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