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

% *Judgment delivered on: 5th May, 2014*

+ **MAC.APP. 371/2014**

NATIONAL INSURANCE CO LTD. Appellant
Represented by: Mr.L.K.Tyagi, Advocate.

Versus

RIYASAT KHAN & ORS. Respondents
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM No.7043/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

MAC.APP. 371/2014

1. Admit.
2. The present appeal has been filed by the appellant/Insurance Company on the sole ground that the respondent No.2, i.e., driver of the offending vehicle was minor and was not holding valid driving licence on the date of the accident.
3. Mr.L.K.Tyagi, learned counsel appearing on behalf of the appellant/Insurance Company submits that in such an eventuality, the

learned Tribunal ought to have exonerated the appellant company from any liability instead of directing it to pay the compensation and then recover the same from respondent Nos. 2 and 3, i.e., driver and owner of the offending vehicle.

4. On this issue, the learned counsel has relied upon the following cases:-

(I) ***United India Insurance Co. Ltd. Vs. Gian Chand, II (1997) ACC 437 (SC)***, wherein after considering the judgments of ***Skandia Insurance Company Limited Vs. Kililaben Chandravadan & Ors; I (1997) ACC 413*** and ***Sohanlal Passio Vs. P. Sesh Reddy & Ors., 1996 (5) SCC 21***, held as under:-

“6. In order to resolve this controversy between the parties, it must be observed at the outset that the aforesaid decisions clearly indicate two distinct lines of cases. The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of Insurance Policy, which required them not to permit the vehicle to be driven by an unlicensed driver. Such a breach is held to be a valid defence for the Insurance Company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accidents which may injure them personally or which may deprive them of their bread winner on account of such accidents caused by the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that cause such accidents wherein the insured owners of the vehicles do not themselves commit breach of any such condition and hand over the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, hand over vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the Insurance Company

cannot get benefit of the exclusionary clause and will remain liable to meet the claims of third parties for accidental injuries, whether fatal or otherwise. The decisions of this Court in Skandia Insurance Company (Supra) and in Sohan Lal Passi (Supra) represent this second line of cases while the decisions of this Court in New India Assurance Co. (Supra) and in Kashiram Yadav (Supra) represent the first line of cases.

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10. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims to third party who might have suffered on account of vehicular accident caused by such unlicensed driver. In view of the aforesaid two sets of decisions of this Court, which deal with different fact situations, it cannot be said that the decisions rendered by this Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. (Supra) and the decision of the Bench of 3 learned Judges in 1996 (5) SCC 21 (Supra) in any way conflict with the decisions rendered by this Court in the cases of New India Assurance Company Ltd. Vs. Mandar Madhav Tambe & Ors. (Supra) and Kashiram Yadav & Ors. Vs. Oriental Fire and General Insurance Co. & Anr. (Supra).

11. In the result, therefore, this appeal is allowed. The decision of the High Court under appeal to the extent it refused to exonerate the Insurance Company will stand set aside and it is held that the appellant-Insurance Company is not liable to meet the claim of the respondent-claimants. The claim petition will stand rejected against appellant-Insurance Company. The respondent-claimants will, however, be entitled to recover the awarded amount of compensation from respondents Nos. 1 and 9.”

(II) ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors. 2004 ACJ 1,***

wherein held as under:-

“100. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having (Sic driving) the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.”

(III) ***United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora, IV (2008) ACC 709 (SC);*** and

(IV) ***Sardari & Ors. Vs. Sushil Kumar & Ors. 2008 ACJ 1307.***

5. The issue of no licence, fake licence or invalid licence has been dealt with by this Court in the case titled as ***Santosh Chabra & Ors. Vs. Abhishek Gureja & Ors.*** in MAC Appeal No.805/2010 decided on 04.10.2013, wherein 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 Ld. 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. Mepherson 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.”

6. Therefore, in view of the decision taken by this Court in the aforementioned case and the facts and circumstances of this case, I find no merit in the instant appeal. The same is accordingly dismissed.

7. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company. The learned Tribunal is directed to release the awarded amount with upto date interest in favour of the respondent No.1/claimant in terms of its award dated 05.02.2014 on taking necessary steps by him.

CM No. 7042/2014 (for stay)

With the dismissal of the appeal itself, the instant application has become *infructuous*. The same is accordingly dismissed.

SURESH KAIT, J.

MAY 05, 2014

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