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

% *Judgment delivered on: 3rd April, 2014*

+ **MAC.APP. No.824/2013**

NARESH KUMAR GAUR Appellant
Represented by: Mr. J.S. Kanwar, Adv.

Versus

THE ORIENTAL INSURANCE CO. LTD. Respondent
Represented by: Mr. L.K. Tyagi, Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present appeal, the appellant has assailed the award dated 10.05.2013, whereby while awarding the compensation for an amount of Rs.3,75,000/- with interest @ 7.5% *per annum* from the date of filing of the Claim Petition till realization of the amount, Ld. Tribunal granted recovery rights against the appellant and in favour of respondent / Insurance Company.

2. Brief facts of the case are that on 01.02.2012, at about 2.15 PM Master Aryan, aged about 3 years (hereinafter referred to as the deceased) was playing in front of D-668, Qutub Vihar, Phase-II, Near Samshan Ghat, Goyla Dairy, New Delhi when he was hit by a car bearing no. DL-9C-AA-0592 (hereinafter referred to as the offending vehicle) after coming on the wrong

side of the road and was being driven by its driver at a very fast speed and in a rash and negligent manner without observing the traffic rules.

3. Mr. J.S. Kanwar, Ld. Counsel appearing on behalf of the appellant / owner of the offending vehicle submits that the offending vehicle was LMV and registered as a private one. At the time of accident, said vehicle was not carrying any commercial activities and the driver of the offending vehicle was having a valid licence for LMV (NT). Thus, the appellant is not liable to pay any amount of compensation. Even, if it is presumed that the offending vehicle was used for commercial activities even then the driver of the offending vehicle was holding valid licence.

4. To strengthen his arguments, Ld. Counsel for the appellant has relied upon a case of ***S. Iyyapan v. M/s United India Insurance Co. Ltd. and Anr. III (2013) ACC 19 (SC)***, wherein it is held as under:

“19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.”

5. On the other hand, Mr. L.K. Tyagi, Ld. Counsel appearing on behalf of the respondent / insurance company submits that Section 2(10) of Motor Vehicles Act, 1988 defines “driving licence” to mean the licence issued by a competent authority under Chapter 11 authorizing the person specified

therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class of description.

6. Mr. Tyagi further submits that the offending vehicle was being used for commercial purposes by the insured and the same was hired by the school to take the children.

7. Ld. Counsel further submits that at the time of accident, neither the driver of the offending vehicle was having valid and effective driving licence to drive the commercial vehicle nor the vehicle was being used for private purpose. Thus, the appellant has violated the terms and conditions of the policy.

8. To strengthen his arguments, Id. Counsel has relied upon a case of **S. Iyyapan (Supra)** wherein it is held as under:

*“15. In the case of **National Insurance Co. Ltd. v. Kusum Rai and Ors.**: (2006) 4 SCC 250, the Respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in **New India Assurance Company v. Kamla** (supra) held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in **Oriental Insurance Co. Ltd. v. Nanjappan**: 2004(13) SCC 224 argued that the awarded amount may be paid and be*

recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

*16. In the case of **National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Ors.** : 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:*

20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that

the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.”

9. I have heard Id. Counsels for the parties.

10. Id. Tribunal framed the issue no. 1 as under:

“Whether Master Aryan sustained fatal injuries in a motor vehicle accident dated 01.02.2012 due to rash or negligent driving of vehicle no. DL-9C-AA-0592 by R1?”

11. PW1, Dilip Kumar Shah had narrated the sequence of accident in his affidavit Ex.PW1/A to show as to how and in what manner the accident had taken place. He was the informant of FIR, wherein he recorded that his elder son Prince Kumar Shah was studying in Gyan Jyoti Public School, Qutab Vihar, Phase-II, New Delhi. The school van no. DL-96-AA-0592 used to take his son to the school and bring back to his residence. On 01.02.2012, the said school van, driven by its driver Ravinder dropped his elder son in front of his house. Thereafter the said van driven by its driver on high speed

rashly and negligently hit his younger son, who was playing one side in front of his house. The local people raised the voice and after some distance the said driver was caught by the public persons.

12. This witness further stated as under:

“The driver of the offending vehicle used to take my son for school since the date of admission in the school.

My son used to travel in Eco vehicle alone from our locality.

I used to deposit the fare along with the fee to the school New Gyan Jyoti Public School.”

13. Section 2 of the Act provides for interpretation of the terms contained herein. It employs the words "unless the context otherwise requires". Section 2(16) of the Act defines "heavy goods vehicle" mean any goods carriage the gross vehicle weight of which, or a tractor or a road- roller the unladen weight of either of which, exceeds 12,000 kilograms.

14. Section 2(21) defines "light motor vehicle" and Section 2(23) defines "medium goods vehicle" as under:

“Light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

“Medium goods vehicle” means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

Section 3 of the Act is in the following terms:

Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective

driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motorcab or motor cycle hired for his own use or rented under any scheme made under Sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do.

15. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

16. The word "Form" has been defined in Rule 2(e) to mean a Form appended to these rules.

I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Medium goods vehicle

(g) Heavy goods vehicle

(j) Motor vehicles of the following description:....

17. It is pertinent to mention here that after amendment the relevant portion of Form 4 reads as under:

I Apply for a licence to enable me to drive vehicles of the following descriptions:

(d) Light motor vehicle

(e) Transport vehicle

(j) Motor vehicles of the following description:....

18. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

19. Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium good vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

20. "Light Motor Vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof read as under:

Authorisation to drive transport vehicle Number.... Date....
Authorised to drive transport vehicle with effect from.... Badge
number.... Signature.... ... Designation of the licensing authority
Name and designation of their authority who conducted the
driving test.

21. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods

carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

22. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

23. PW1 has established that the offending vehicle was being used for commercial purpose.

24. It is undisputed fact that vehicle in question was registered as a private vehicle, which is apparent from RC and policy Ex.R3W1/1, which was issued by the insurer to the insured for private vehicle. Premium was also received by the respondent / insurance company for the use of the offending vehicle as a private vehicle and not for the commercial use.

25. Admittedly, the driving licence of driver Ravinder was valid on the date of accident, but only for the motorcycle + LMV (NT), not for commercial vehicle.

26. In view of the above discussion, I do not find any merit in the instant appeal. Same is accordingly dismissed.

SURESH KAIT, J

APRIL 03, 2014

jg/sb