

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

Judgment Reserved on: December 01, 2015

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Judgment Delivered on: December 07, 2015

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MAC.APP. 75/2011

NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Manoj Ranjan Sinha,
Advocate.
versus

RAMESH KUMARI & ORS Respondents
Through: None.

AND

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MAC.APP. 79/2011

NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Manoj Ranjan Sinha,
Advocate.
versus

KRISHNA RANI & ORS Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. By this common judgment, I shall dispose of two appeals bearing MAC.APP. No.75/2011 and MAC.APP.No.79/2011, which are arising out of the common award dated 27.11.2010 passed by learned Motor

Accident Claim Tribunal in Claim Petitions bearing Nos.17/2010 and 18/2010.

2. The claimants/injured persons namely Ramesh Kumari (respondent No.1 in MAC.APP.No.75/2011) and Krishna Rani (respondent No.1 in MAC.APP.No.79/2011) suffered injuries in the same accident but filed separate claim petitions. The two claim petitions were consolidated and after inquiry the learned Tribunal awarded the compensation to the claimants/injured persons as under :-

Claim Petition No.17/2010

<i>Under the head</i>	<i>Compensation granted by Tribunal</i>
Pain & Suffering	₹ 55,000/-
Expenses towards medical bills	₹ 30,709/-
Reasonable medical expenses (without bills)	₹ 5,000/-
Conveyance & special diet (without bills)	₹ 10,000/-
Loss on account of remaining out of daily routine work/job	₹ 10,000/-
TOTAL	₹ 1,10,709/- (rounded off to ₹1,10,700/-)

Claim Petition No.18/2010

<i>Under the head</i>	<i>Compensation granted by Tribunal</i>
Pain & Suffering	₹ 35,000/-

Expenses towards medical bills	₹ 35,558/-
Reasonable medical expenses (without bills)	₹ 5,000/-
Conveyance & special diet (without bills)	₹ 10,000/-
Loss of income during one month	₹ 8,000/-
TOTAL	₹ 93,558/- (rounded off to ₹93600/-)

3. The appellant/insurance company impugned the award dated 27.11.2010 mainly on two grounds:-

(i) It was a case of contributory negligence as the driver of the Car bearing registration No.DL-7C-F-0018 in which the claimants/injured persons were travelling, was also responsible for the accident.

(ii) After passing of the award, the licence of the driver of the offending vehicle i.e. truck bearing registration No.HR-37-A-8254 which was insured with the appellant, was found to be fake.

4. Vide order dated 18.09.2014, this Court, after hearing learned counsel for the insurance company and the claimants has rejected the contention raised by the insurance company about the contributory negligence of the driver of the car in which the claimants/injured persons were travelling.

5. Since the above order has not been challenged by the appellant/insurance company, the same has attained finality.

6. In respect of the second contention raised by the appellant/insurance company that the licence of the driver of the offending vehicle i.e. truck bearing registration No.HR-37-A-8254 was found to be fake, this Court allowed the applications filed by the appellant/insurance company i.e. CM No.1717/2011 (in MAC.APP.No.75/2011) and CM No.1727/2011 (in MAC.APP.No.79/2011) to lead additional evidence.

7. CM Nos.1717/2011 and 1727/2011 have been allowed on 18.09.2014 by passing the following order :-

‘1. I will now dispose of the application filed by the appellant Insurance Company, namely, CM No.1717/2011 in MAC.A.75/2011 and CM No.1727/2011 in MAC.A.79/2011. These are two applications filed seeking permission to lead additional evidence. It is averred that as per the report of the District Transport Authority, Kamrup, Guwahati, Assam dated 11.11.2010 the initial driving licence of the driver of the offending vehicle was not issued in his name and it is a fake. This aspect could not be brought on record by the appellant Insurance Company as the Award was passed on 27.11.2010 and the report from the District Transport Authority, Kamrup, Guwahati, Assam came just a few days before.

2. In my view, there is sufficient ground to permit the appellant to lead additional evidence. The applications are accordingly allowed and the appellants is permitted to lead additional evidence.

3. List the matter before the Registrar on 30.10.2014.

4. *In the meantime, the appellant may file their list of witnesses. The Registrar may give appropriate directions for recording of additional evidence and send the matter back to Court after completion of additional evidence.*

5. *The claimants need not appear before this Court henceforth.'*

8. On behalf of appellant/insurance company Mr.Manoj Ranjan Sinha, Advocate has submitted that pursuant to the permission granted by this Court to lead additional evidence, the insurance company has examined two witnesses namely Mr.Kartick Saha – the Investigator as AW-1 and Mr.Sunil Kumar Nama – Administrative Officer (Legal) as AW-2 in MAC.APP.No.75/2011 which also to be read as evidence in MAC.APP. No.79/2011.

9. From the testimony of AW-1 Sh.Kartick Saha, the Investigator, it is proved that the driving licence of respondent No.2 Manoj Kumar – driver of the offending vehicle was verified by him and found to be fake. He submitted his report dated 12.11.2010 to the insurance company to this effect.

10. AW-2 Mr.Sunil Kumar Nama, Administrative Officer (Legal) of National Insurance Company Ltd. has placed on record the certified copy of the insurance policy as Ex.AW2/1 as well the copy of the notice under Order XII Rule 8 CPC calling upon the driver and owner of the offending vehicle to produce all the documents including the driving licence effective on the date of accident.

11. Learned counsel for the appellant/insurance company has submitted that since the owner/driver of the offending vehicle failed to comply with the notice under Order XII Rule 8 CPC, the insurance company is entitled to have recovery rights.

12. The limited question that is now pending consideration before this Court in these appeals is to grant recovery rights to the insurance company. The basis on which the recovery rights is claimed is that on verification the driving licence of respondent No.2 Manoj Kumar – driver of the offending vehicle was found to be fake.

13. Legal position is well settled that merely because the driving licence is fake, is no ground to exonerate the insurance company of its liability.

14. In the case of National Insurance Company Limited v. Swaran Singh & Ors. 2004 (3) SCC 297, it was held that to avoid its liability towards the insured, 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 a duly licenced driver or one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving negligence on the owner's part.

15. In the case of United India Insurance Company Ltd. v. Lehru & Ors. 2003 (3) SCC 338, it was held by the Supreme Court that owner of a vehicle while hiring a driver is not expected to check the records of the licencing officer to satisfy himself that the driving licence is genuine. If

the driver produces a driving licence which on the face of it looks genuine, the owner cannot be said to be negligent. The relevant para of the report is extracted as under:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skiandia's Sohan Lal Passi's and Kamla's cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

16. The contention raised before this Court that the driver/owner of the offending vehicle had failed to comply with notice under Order XII Rule 8 CPC sent by the insurance company is also no ground to grant recovery rights for the reason that this notice has been sent on 13.04.2015. The record shows that in both the appeal, the notice of the appeal was sent to the respondent. While counsel for the claimants/respondent No.1 Ms.Manjeet Chawla, Advocate appeared of her own without notice, the notice could not be served on respondents No.2 and 3 initially for the reason that steps were not taken for service of any of the respondents. In both the appeals, notice was ordered to be sent to the respondents on 25.1.2011. Learned counsel for the respondent No.1/claimant appeared without service on 20.04.2011 and thereafter though for completing the service of the respondents No.2 and 3, the matter was listed before the Registrar, steps were not taken to get them served. Respondent No.2 – the driver of the offending vehicle has been served through publication. Respondent No.3 – the owner of the offending vehicle had expired and on 04.10.2013 an application for bringing on record his legal heirs was filed alongwith the application seeking condonation of delay. Notice was ordered to be issued to the proposed LRs and ultimately they have also been served through publication.

17. In the above circumstances, the appellant/insurance company cannot claim that they have discharged the onus that terms and conditions of the insurance policy have been breached by the insured. It is relevant

to extract the findings of learned Tribunal on this issue which reads as under:-

‘There being no evidence of violation of the policy condition and there being no evidence to support the permitted defence U/s. 149(2) of the M.V.Act, I am unable to grant the recovery rights. Therefore, insurance company shall make good the compensation in terms of the accepted policy.’

18. Thus, during inquiry before the learned Tribunal, the breach of terms and conditions of the insurance policy was not proved so as to entitle the appellant/insurance company to have recovery rights. Even during pendency of the appeals, after the application under Order XLI Rule 27 CPC was allowed only the report of the Investigator has been proved without establishing willful breach of terms and conditions of the terms of the policy by the insured.

19. In view of above, I do not find it to be a fit case to grant recovery rights to the insurance company.

20. Both the appeals are dismissed.

21. Statutory amount deposited by the appellant/insurance company at the time of filing of these appeals, be refunded to the appellant/insurance company.

22. LCR be sent back alongwith copy of this order.

(PRATIBHA RANI)
JUDGE

DECEMBER 07, 2015/ ‘st’