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

Decided on: 9th January, 2015

\+ **MAC.APP. 172/2011**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.A.K. Soni, Advocate

versus

PRAKASH CHAND & ORS. ..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This appeal is directed against the judgment dated 20.11.2010 whereby compensation of Rs.8,27,408/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 24.11.2004 at 11:30 p.m.

2. At the time of hearing of the appeal, the sole contention raised by the learned counsel for the Appellant is that since the Appellant had successfully proved breach of terms and

conditions of policy, he was entitled to recovery rights against the insured(Respondent no.3), owner of the vehicle. Mr. A.K. Soni, Advocate urges that although the Claims Tribunal was conscious of the fact that breach of the terms and conditions has been established as the same was discussed by the Claims Tribunal in para 9 of the impugned judgment, yet while apportioning the liability, the Claims Tribunal totally missed out the same.

3. In para 9, the Claims Tribunal observed as under:

"9. Insurance company/R-1 examined Shri Dharmender Arya R3W1 who proved the insurance policy Ex.R3W1/1 and the covering letter of driving licence verification Ex.R3W1/2, Driving licence verification report received from Investigator Dr. Dharam Paul is Ex.R3W1/3, the original DL verification report is Ex.R3W1/4. In the aforesaid report, it was clearly mentioned that DL No.NDL/1201 dated 18.2.2003 was not issued. He has proved lthe official copy of Hoshiar Pur DTO regarding verification of DL as Ex.R3W1/5, the photocopy of DL is Ex.R3W1/6. He further proved the letter issued from Hoshiar Pur DTO as Ex.R3W1/7 and seizure memo of DL as Ex.R3W1/8. This witness has proved the notice issued to insured and driver as Ex.R3W1/9 vide receipt Ex.R3W1/10, second notice is Ex.R3W1/11, receipt Ex.R3W1/12 and the third notice Ex.R3W1/13 and receipt as Ex.ar3w1/14. He has further stated that driver was not holding valid driving licence, hence, the insurance company is not liable to pay any compensation. The witness was not cross-examined by the petitioner nor by the driver/owner."

4. Thus, it is evident from the evidence adduced by the Appellant Insurance Company that a copy of the driving licence made available from the criminal case on verification was found to be

fake as the driving licence in question was not issued on 18.02.2003 as was apparent from the driving licence. The Appellant issued notices Exs. R3W1/9, R3W1/11 and R3W1/13 to the owner and driver (Respondents no.2 and 3 herein), yet the driver and owner failed to produce the driving licence. In view of this, it is clearly established that Insurance Company has done whatever was within its power to prove that there was conscious breach of the terms and conditions of the policy. The onus had then shifted on the insured to rebut the presumption that the breach was not conscious and willful. In MAC.APP.399/2005 decided on 27.11.2012, this Court held as under:

> *"11. There is no dispute about the proposition of law which is well settled that it is for the Insurer to prove that there was breach on the part of the insured. (Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; National Insurance Company Limited v. Swaran Singh & Ors., (2004) 3 SCC 297 and United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338)*
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> *12. It is well settled that onus keeps on shifting depending upon the facts and circumstances of the case. Since it was established that Gopal was driving the vehicle at the time of the accident and that he did not possess a valid and effective driving licence; it was for the third Respondent to prove that there was no negligence on his part and he took all steps not to commit breach of the terms and conditions of the policy. I am supported in this view by a judgment of the learned Single Judge of this Court in New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR*

2007(II) Delhi 733. In Para 22 of the report it was held as under:-

> *22. Thus, where the insurance company alleges that the term of the policy of not entrusting the vehicle to a person other than one possessing a valid driving licence has been violated, initial onus is on the insurance company to prove that the licence concerned was a fake licence or was not a valid driving licence. This onus is capable of being easily discharged by summoning the record of the Licencing Authority and in relation thereto proving whether at all the licence was issued by the authority concerned with reference to the licence produced by the driver. Once this is established, the onus shifts on to the assured i.e. the owner of the vehicle who must then step into the witness box and prove the circumstances under which he acted; circumstances being of proof that he acted bona fide and exercised due diligence and care…………."*

13. Thus, in my view, the Appellant successfully proved the breach of the terms and conditions of the policy and was, therefore, entitled to avoid the insurance policy but for the statutory liability."

5. Since the Insurance Company has successfully proved breach of the terms and conditions of policy, in view of the three Judge Bench decision in *Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21* and *United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338*, the Appellant would be entitled to recover the compensation paid from the insured.

6. The appeal is accordingly allowed.

7. It is held that the Appellant shall be entitled to recover the compensation paid in execution of this very judgment without having recourse to separate proceedings for recovery of the amount.

8. Pending applications also stand disposed of.

9. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 09, 2015
pst