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

Decided on: 06th May, 2015

\+ **MAC.APP. 136/2010**

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate with Mr. Amit Gaur, Advocate

versus

GARGI SINGH & ORS ..... Respondents

Through: Mr. Navneet Goyal, Advocate for Respondent no.6

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant has filed the appeal against the judgment dated 27.11.2009 challenging the quantum of compensation and its liability. Compensation of Rs.18,96,000/- was awarded by the Motor Accident Claims Tribunal(Claims Tribunal) in favour of Respondents no.1 to 4 for the death of Veer Singh, who suffered fatal injuries in a motor vehicular accident which occurred on

04.08.2000. The learned Single Judge of this Court by an order dated 08.03.2010 issued notice to Respondents no.5 and 6 only with regard to the liability.

2. An application for additional evidence was moved by the Appellant which was allowed by this Court. In pursuance of the application, the Appellant examined Pramod Kumar, Senior Clerk Enforcement from the office of RTO Agra. He testified that the driving licence Ex.AW1/A appearing at pages 113 and 115 of the Trial Court record was not genuine. He stated that the licence at this number was issued in the name of Islam S/o Mohd Khan, R/o Tajganj, Agra.

3. The learned counsel for the Appellant urges that a notice under Order 12 Rule 8 CPC was issued to the insured to produce licence of the driver. However, that was not done by the insured. The Appellant also proved that the driving licence Ex.AW1/A seized by the police was fake. Thus, the Appellant successfully proved willful and conscious breach of the terms and conditions of the insurance policy on the part of the insured. Therefore, even if the Insurance Company was made liable to

pay the compensation, recovery rights ought to have been granted.

4. On the other hand, the learned counsel for Respondent no.6(insured) submits that the driver (Respondent no.5) had produced a driving licence available at page 97 of the Trial Court record. Respondent no.6 also conducted the driving test and appointed driver Sharavan Singh(Respondent no.5) only after he was satisfied about the driving skills of the driver. The learned counsel urges that although the Insurance Company was all along aware of the driving licence no.2825/Agra/93 available on the record which the owner believed to be genuine, but it never preferred to get the said licence verified.

5. Before dealing with the relevant law on the subject, it will be apposite to refer and deal with the factual situation. The Appellant did not take any specific defence in the written statement that the driving licence no.S/6840/92A seized by the police and available on the Trial Court record was fake. No evidence was led to prove the said licence to be fake during inquiry before the Claims Tribunal. Application for additional

evidence moved before this Court was allowed. The Appellant examined AW-1, Pramod Kumar who deposed that the driving licence Ex.AW1/A was fake as this licence was issued in the name of Islam S/o Mohd Khan, R/o Tajganj, Agra. Thus, it is evident that the licence Ex.AW1/A which was claimed to be seized by the police was fake. A perusal of the Trial Court record reveals that the driving licence no.2825/Agra/93 was available before the Trial Court on 20.05.2009 (as is evident from the order sheet of the Trial Court record). Once this licence was on the record, it was Insurance Company's duty to get it verified. During the pendency of the appeal, Respondent no.6 filed his Affidavit Ex.R6W1/A in rebuttal to the Appellant's evidence and testified that he had seen the driving licence no.2825/Agra/93 dated 05.08.1993 issued from Agra Transport Authority which seems to be genuine. He took the driving test of the driver and found him to be a competent driver.

6. Although, the Appellant failed to prove that the driving licence no.2825/Agra/93 was fake, it is well settled that it is always not

possible for the insured/owner of the vehicle to get the licence of the driver verified from the Transport Authority. 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, the insurer has to prove that the insured was guilty of negligence and he 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 by one who was not disqualified to drive at the relevant time. As stated earlier, Respondent no.6 took driving test and also saw the driving licence of Respondent no.5 which he believed to be genuine. The said licence has not been proved to be fake by the Insurance Company.

7. In the case of *United India Insurance Company Ltd. v. Lehru & Ors. (200) 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

said to be negligent. I would extract Para 20 of the report hereunder:-

> "20. *When an owner is hiring a driver he will therefore have to check whether the driver was 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 find 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."*

8. In view of above discussion, it cannot be said that the Appellant

has discharged the initial onus of proving that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy.

9. The appeal therefore, has to fail; the same is accordingly dismissed.

10. Pending applications, if any, also stand disposed of.

11. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MAY 06, 2015
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