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

Decided on: 13th February, 2015

+ **MAC.APP. 282/2007**

THE NATIONAL INSURANCE. CO. LTD Appellant
Through Mr. Pradeep Gaur, Advocate

versus

SHASHI GOEL & ORS. Respondents
Through Mr. Arun Srivastava, Advocate

+ **MAC.APP. 283/2007**

THE NATIONAL INSURANCE. CO. LTD Appellant
Through Mr. Pradeep Gaur, Advocate

versus

GEETA DEVI & ORS. Respondents
Through Mr. Arun Srivastava, Advocate for
Respondents no.1 and 2.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The present appeals are directed against the judgment dated 23rd March, 2007 whereby compensation of Rs. 19,61,000/- was awarded for the death of Achin Goel, who had died in a motor vehicular accident which occurred on 4th January, 2005.

2. The Claims Tribunal found that the accident was caused on account of rash and negligent driving of a truck and the TSR bearing no.DL-1RD 5969. Since the offending truck could not be traced, the claim petition was filed against the owner of TSR (Raju) Respondent no. 3 herein,(Kuldeep Singh) transferee of the TSR, Respondent no.4 herein, and (Sadanand) Respondent no.5, the permit holder of the TSR.

3. The Claims Tribunal accepted the income of the deceased as Rs. 18,000/- per month, added 50% towards future prospects, deducted ½ towards personal expenses and selected the multiplier of 9 as per the age of the mother of the deceased to compute the loss of dependency as ₹19,44,000/-.

4. The Claims Tribunal found that the TSR was transferred by Respondent no.3 to Respondent no.4 without notice of transfer to the Insurance Company and thus, while making the Appellant/Insurance Company liable to pay compensation, it granted recovery rights from the owner of the vehicle Kuldeep Singh to the Insurance Company.

5. The following contentions have been raised on behalf of the Appellant/ Insurance Company:-

- (i) There was a violation of condition of permit as the TSR was being driven by driver although only the permit holder was entitled to drive the TSR as per the conditions of the permit;
- (ii) the compensation awarded is on the higher side as the gross salary of the deceased was considered without any deduction towards allowances and income tax; and

(iii) Since the driver was found to be driving the vehicle without a valid licence and a conscious and willful breach of the terms and conditions of the insurance policy was proved, the Appellant was entitled to be exonerated from paying the compensation.

6. On the other hand, learned counsel for the Respondents no. 1 and 2 supports the impugned judgment and urges that the compensation awarded is just and reasonable.

7. As far as driving of TSR only by the permit holder being a condition of the permit is concerned, the violation of terms and conditions of the permit not always amounting to violation of Section 149(2)(i)(c) of the Motor Vehicles Act, 1988. This issue was dealt with at great length by me in *Mahender Singh vs. Oriental Insurance Company Limited & Others* MAC App.430/2010 decided on 10.05.2012. Paras 7 to 10 of the said judgment are extracted hereunder:

“7. Can it be said that the Insurance Company would be able to avoid liability if the vehicle is not kept clean or the driver is not wearing the uniform? It is not each and every condition of permit contravention of which would allow the Insurance Company to avoid the liability. On the other hand, a close reading of the Clause (c) to Section 149 (2) (i) (a) would show that it is only the user of the transport vehicle for the purpose not allowed by the permit would enable the Insurance Company to defend the action to satisfy an award in a motor accident where the risk is covered by a policy obtained under Section 147 of the Act.

8. The interpretation of contravention of condition of permit envisaged under Section 66 of the Act and the contravention of condition of permit with respect to the purpose for which the vehicle may be used came up for

consideration before the Supreme Court in State of Maharashtra and Ors. v. Nanded-Parebhani Z.L.B.M.V. Operator Sangh (2000) 2 SCC 69 albeit in a different context. In the said case, the police had seized certain vehicles for carrying passengers in excess of the numbers permitted by the condition of permit issued by the Transport Authority. The action was challenged by the Association of Transporters by virtue of a writ petition before the Aurangabad Bench of Bombay High Court. The High Court analyzed the different provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and on consideration of the same came to the conclusion that it is not each and every violation of the condition of the permit which would authorize the seizure and detention of the vehicle under Section 207 (1) of the Act. It was held that it was only when the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle was used, is violated, the vehicle could be seized by the Authorities. The Appeal filed by the State of Maharashtra was dismissed by the Supreme Court. The contention raised on behalf of the State of Maharashtra that carrying passengers more than prescribed by the permit could be construed to be violation, was rejected. The Supreme Court relied upon the report in Kanailal Sur v. Paramnidhi Sadhu Khan (1958) 1 SCR 360 and held as under:-

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act". The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided. Bearing in mind, the aforesaid principles of construction of statute and on examining the provisions of Section 207 of the Act,

which has been quoted earlier, we have no doubt in our mind that the police officer would be authorised to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or without the permit required under Sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. In the case in hand, we are not concerned with the contravention of Section 3 or Section 4 or Section 39 or Sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every condition of permit on being violated or contravened, the police officer would be entitled to detain the vehicle. According to the learned Counsel, appearing for the State of Maharashtra, the expression "purpose for which the vehicle may be used" could be construed to mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of user is otherwise. We are unable to accede to this contention as in our opinion, the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If the

legislature really wanted to confer power of detention on the police officer for violation of any condition of the permit, then there would not have been the necessity of adding the expression "relating to the route on which or the area In which or the purpose for which the vehicle may be used". The user of the aforesaid expression cannot be ignored nor can it be said to be a tautology. We have also seen the Form of permit (From P.Co. T.), meant in respect of a tourist vehicle, which is issued under Rule 72(1)(ix) and Rule 74(6) of the Maharashtra Motor Vehicles Rules, 1989. On seeing the different columns, we are unable to accede to the contention of the learned Counsel appearing for the State of Maharashtra, that carrying passengers beyond the number mentioned in Column 5, indicating the seating capacity, would be a violation of the conditions of permit relating to either the route or the area or the purpose for which the permit is granted. In this view of the matter, we see no infirmity with the conclusion arrived at by the High Court in the impugned judgment and the detention of the vehicles has rightly been held to be unauthorised and consequently, the compensation awarded cannot be said to be without jurisdiction.....”

9. Although, the interpretation of Section 207 was done by the Supreme Court in a different context, yet, the same would apply to Clause (c) to Section 149 (2) (a) (i) of the Act.

10. Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle for

the purpose not allowed by the permit under which the vehicle was used.”

QUANTUM OF COMPENSATION

8. I have the trial Court record before me. The deceased was getting a salary of Rs. 17419/- per month. The salary certificate was proved as Ex.PW-2/B. This sum included a sum of Rs. 774/- towards transport allowance. The transport allowance being incidental to employment was liable to be deducted from the gross salary. Yet, other allowances like HRA and medical allowance *etc.* are part of the salary which was available to the deceased and his family members.

9. It is stated that the deceased was a qualified Chartered Accountant. He was working with India Bulls since the year 2003 and his salary had increased substantially from Rs. 10000/- in October, 2003 to Rs. 17419/- on the date of accident. The Respondents, therefore, will be entitled to addition of 50% towards future prospects.

10. The mother of the deceased was aged 48 years on the date of accident (as per the date of birth recorded in the Voters ID Card issued by the Election Commission of India). The Claims Tribunal adopted the multiplier of 9 which ought to have been 13.

11. The loss of dependency therefore, comes to Rs. 18,15,840/- [17419 – 774 X 12 *minus* 13500/- as Income Tax *plus* 50% x 13/2]

12. In addition, the Respondents are entitled to a sum of Rs.1,00,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses and Rs.10,000/- as loss to estate. The compensation totals up as Rs.19,50,840/-. Hence, the compensation of Rs. 19,61,000/- awarded by the Claims Tribunal cannot be said to be exorbitant or excessive.

13. As far as the liability to pay the compensation even in case of conscious and willful breach of the terms and conditions of the insurance policy is concerned, it is well settled as per the decision of *Sohan Lal Passi vs. P.Sesh Reddy*, (1996) 5 SCC 21.

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14. In addition to the ground of violation of permit and breach of the terms and conditions of insurance policy, the learned counsel for the Appellant Insurance Company urges that deceased was not a paid driver of the TSR involved in the accident. The learned counsel refers to the evidence of PW-2 Smt. Geeta Devi wherein she had testified that her son after paying rent of Rs.150/- per day to the owner used to earn Rs.100/- to Rs.110/- per day as his income from driving the TSR.

15. The Trial Court record reveals that vide cover note no.0806458, a premium of Rs.25/- was charged by the Appellant Insurance Company for coverage of risk of the driver. It is nowhere stated in the cover note that the driver ought to be an employee of the owner and insurance policy was subsequently issued where the premium of Rs.25/- has been written as liability under WC to employee. The Motor Vehicles Act, 1988, being a welfare legislation, the amount of Rs.110/- being earned by the driver will at least put him as an employee for the purpose of Motor Vehicles Act and therefore, I am of the view that the risk of the driver was covered under the insurance policy. The awarded compensation therefore, cannot be faulted.

16. Thus, the Appellant though would be initially liable to pay the compensation, it would be entitled to recover the compensation paid from

Respondent no. 3, the insured and the previous owner Kuldeep Singh, the transferor of the vehicle.

17. The appeal is disposed of in above terms.

18. The compensation deposited shall be released/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.

19. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

FEBRUARY 13, 2015

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