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

*Decided on: 26<sup>th</sup> February, 2015*

+ **MAC.APP. 575/2006**

M/S NATIONAL INSURANCE CO. LTD. .... Appellant

Through : Ms. Sonia Sharma, Advocate.

versus

MASTER RAVI KUMAR & ORS. .... Respondent

Through : None.

+ **MAC.APP. 619/2006**

M/S NATIONAL INSURANCE CO LTD .... Appellant

Through : Ms. Sonia Sharma, Advocate.

versus

LALIT KUMAR & ORS. .... Respondent

Through : None.

+ **MAC.APP. 577/2006**

M/S NATIONAL INSURANCE CO LTD .... Appellant

Through : Ms. Sonia Sharma, Advocate.

versus

ANIL KUMAR & ORS .... Respondent

Through : None.

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

**J U D G M E N T**

**G. P. MITTAL, J. (ORAL)**

**CM APPL. 16034/2013 IN MAC.APP. 575/2006**

**CM APPL. 16032/2013 IN MAC.APP. 619/2006**

**CM APPL. 16033/2013 IN MAC.APP. 577/2006**

For the reasons stated in the applications, the appeals are restored to their original numbers.

The applications stand disposed of.

**MAC APPs. 575/2006, 619/2006 & 577/2006**

1. The only ground of challenge raised by the Appellant/New India Insurance Company in these three appeals is that although the Insurance Company successfully proved conscious and willful breach of the terms and conditions of the insurance policy, yet neither the Insurance Company was exonerated nor recovery rights were granted to it.

2. The learned counsel for the Appellant has taken me through the testimony of R3W1/Mr. K.K. Sharma, Assistant with the Appellant company and R3W1/Mr. Nityanand Mishra, Clerk, RTO Office, Kuttack. R3W1 simply deposed that a notice under Order 12 Rule 8 CPC was served upon the owner and driver to produce the insurance policy and the driving licence of the driver but the said notice was received back unserved. Ex.R1 was produced to prove that as per the record maintained in the office of RTO, Kuttack., endorsement to drive an HGV was made on the driver's license on 26.12.1998. The

learned counsel urges that in the instant case, the accident had taken place on 13.06.1998 but, the endorsement for HGV was made only in December, 1998. Thus, the Appellant amply proved that the driver did not possess a valid driving license to drive the class of vehicle which was involved in the accident on the date of accident. It is urged by the learned counsel that whatever was in its power to prove that there was conscious and willful breach of the terms and conditions of the insurance policy by the insured was done by it before the Tribunal.

3. The Claims Tribunal dealt with the issue of liability in para 20 of the impugned judgment which is extracted herein below:-

*“20. LIABILITY*

*It is submitted by Ld. Counsel for insurance company that the insurance company is not liable to satisfy the award as R1 was not driving the the offending vehicle with a valid driving license. He was driving HGV although he had a license to drive LMV. It is proved from the statement of R3W1 that at the time of the accident, R1 was having license to drive LMV only. The accident took place on 15.5.98 and he got the license to drive HGV w.e.f. 26.12.98. Now, the question is whether the insurance company has proved that there was any wilful breach on the part of insured. It is nowher pleaded in the written statement by the insurance company that R1 was having license to drive LMV whereas the owner has permitted him to drive HGV and thereby committed wilful breach of terms and conditions of the policy. The*

*notice was sent to R1 nd R2 to produce the original policy and the driving license. These notices were not served. The owner was never examined to prove that there was wilful breach on his part.”*

4. It is important to note that in the written statement filed by the Appellant/Insurance Company, a vague and general plea regarding the same was taken which is extracted hereunder:-

*“2.That the contract of insurance is a contract of indemnity and if the insured wants to take benefit of contract of insurance, then he will have to prove that his vehicle was insured on the day of the alleged accident and that he has not committed any breach of terms and conditions of the insurance policy and that the vehicle at the relevant time was being driven by the persons who was holding a valid and effective driving license. In case the insured fails to prove the above, then no liability can be fastened on the answering respondent and the petition against the answering respondent will be liable to be dismissed.”*

5. The driver and the owner also contested the claim petition and admitted the averments made in para 17 of the Petition that the vehicle was insured with the National Insurance Company Limited vide Certificate No. 153104/6700058/98-99 valid from 14-4-98 to 13-4-99. At the same time, the driver and the owner disputed that the accident was caused because of the rash and negligent driving of the insured vehicle by the driver. It is not known as to when the Appellant/Insurance Company came to know that the driver did not

possess a valid driving license. The written statement filed by the Appellant/Insurance Company was never amended and it was only in the year 2005 (*i.e.* 7 years after the accident) that it was sought to be proved that the driver did not possess a valid driving license on the date of the accident. The notice to produce the driving licence was also not served upon the driver and the owner.

6. In my view, the Claims Tribunal rightly held that the Appellant failed to prove the conscious and wilful breach of the terms and conditions of the insurance policy. Consequently, recovery rights were rightly declined to the Appellant.

7. The appeals therefore, have to fail, the same are accordingly dismissed. Pending applications also stand disposed of.

**G.P. MITTAL, J**

**FEBRUARY 26, 2015**

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