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

Decided on: 22nd January, 2015

+ **MAC.APP. 301/ 2013**

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

ARCHANA SINGH & ORS. Respondents

Through: Mr. D.K. Sharma Adv. for R-1 to 6.

+ **MAC.APP. 423/ 2013**

ARCHANA SINGH & ORS. Appellants

Through: Mr. D.K. Sharma Adv. for Appellants
no. 1 to 6

versus

SHRIRAM GENERAL INSURANCE CO. LTD. Respondent

Through: Mr. Sameer Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of the judgment dated 31.01.2012 whereby compensation of Rs.1,39,20,125/- was awarded in favour of

Respondents no. 1 to 6 in MAC APP No. 301/2013. The same was calculated as:

S.No.	Head of Compensation	Granted by the Claims Tribunal
1.	Loss of Dependency	1,38,70,125/-
2.	Loss of Love and Affection	25,000/-
3.	Loss of Estate	10,000/-
4.	Funeral Expenses	5,000/-
5.	Loss of Consortium	10,000/-
	Total	1,39,20,125/-

3. For the sake of convenience, the Appellant Insurance Company in MAC APP No.301/2013 and Respondent in MAC APP No.423/2013 shall be referred to as the Insurance Company whereas the Appellants in MAC APP No. 423/2013 and Respondents no.1 to 6 in MAC APP No. 301/ 2013 shall be referred to as the claimants.

4. The following contentions are raised on behalf of the Insurance Company:-

(i) The Claims Tribunal erred in awarding 30% increase towards future prospects, since deceased Raj Narayan Singh was not

in permanent employment of Government/ Public Sector Undertaking, no addition towards future prospects ought to have been made.

(ii) The driver possessed two driving licences, one of which was found to be fake. Although the second driving licence was not verified, yet since a person cannot possess two driving licences as per provisions of Section 6 of Motor Vehicles Act, 1988, the second licence will be void and the Insurance Company ought to have been granted recovery rights.

5. On the other hand, the learned counsel for the claimants raises the following contentions:-

(i) The deceased had good future prospects as deposed by PW-3, since he was aged about 38 years an increase of 50% ought to have been made on the basis of *Sarla Verma v. DTC (2009) 6 SCC 121*.

(ii) Compensation awarded towards non-pecuniary head is on the lower side. Reliance is placed on *Rajesh v. Rajbir Singh (2013) 9 SCC 54*.

FUTURE PROSPECTS

7. I have the Trial Court Record before me. Deceased Raj Narayan Singh was working as Manager (Operations) with IBM India Pvt. Ltd. by virtue of an appointment letter dated 11.06.2009. In order to prove future prospects, claimants examined PW-3 Deepak Swamy, Assistant Manager (HR) of IBM India Pvt. Ltd. He deposed that if performance of the deceased had remained good, then the salary of the deceased would have been increased by 25% with promotion to the next level. He further added that the Company was giving increase of 10% per annum in the salary of all the employees if their performance is good. It may be mentioned that IBM India Pvt. Ltd. is a reputed company and deceased Raj Narayan Singh was a highly qualified person.

8. In view of this, the Claims Tribunal ought to have made 50% addition towards future prospects instead of 30% as granted by the Claims Tribunal.

9. I may say that addition of future prospects is confined not only to Government employees as per *Sarla Verma (supra)*. Anybody in permanent/regular employment having good future prospects is entitled to addition of future prospects.

12. The loss of dependency, therefore, comes to Rs.1,42,46,475/- [1,07,959/- x 12 -4,51,273/- (income tax) + 50% x 3/4 x 15].

13. Further, in view of the judgment in *Rajesh (supra)*, the claimants were entitled to Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and 20,000/- towards loss of estate, which is tabulated as under:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal (in Rs.)	Awarded by this Court (in Rs.)
1.	Loss of Dependency	1,38,70,125/-	1,42,46,475/-
2.	Loss of Love and Affection	25,000/-	1,00,000/-
3.	Loss to Estate.	10,000/-	20,000/-
4.	Funeral Expenses	5,000/-	25,000/-
5.	Loss of Consortium	10,000/-	1,00,000/-
	TOTAL	1,39,20,125/-	1,44,91,475/-

14. The overall compensation hence, comes to Rs.1,44,91,475/-.

15. The enhanced compensation of Rs.5,71,350/- shall carry interest @ 7.5% p.a. from the date of filing of the petition till its payment.

LIABILITY

16. The question of liability was dealt with by the Claims Tribunal in paras 32 to para 37 of the impugned judgment, which are extracted hereunder:-

“32. Respondent no. 1 examined himself as R1W1 and deposed that the vehicle in question was fully insured with the insurance company. The R1W1 exhibited the photocopy of driving licence as R1W1/1. During cross examination, R1W1 stated that he was resident of Mainpuri, U.P and was possessing ration card and election ID card of Mainpuri address and he had no document to the effect that he ever resided in Hardoi district. R1W1 stated that in Hardoi he was residing where vehicles were parked and he was not having any residential address and he had resided in Hardoi 1-2 years before the issuance of his licence. R1W1 stated that he went to Hardoi for taking his licence six months before. R1W1 stated that he did not give any document to the police and the licence Mark X was having his photograph but did not belong to him. R1W1 stated that he did not know anything about Mark X.

33. R2W1 Sh. Yogesh Kumar deposed that respondent no. 1 was working with him as a driver since 2009. During cross-examination, R2W1 stated that he had checked the driving licence of respondent no. 1 / driver, at the time of employment of driver and the same was found to be correct and the driver was employed 3-4 months before the accident. R2W1 stated that at the time of employment

he had seen photocopy of driving licence issued from Licencing Authority, Hardoi and other particulars of driving licence were not checked and he kept the photocopy of the driving licence. R2W1 stated that he kept the driver on the recommendation of one person namely Sh. Surrender Kumar and after the accident he had got respondent no. 1 released on bail. R2W1 stated that he had come to know about the driving licence of Mathura only during the proceedings of the case and police did not record his statement. R2W1 stated that Ex.R1W1/1 was never supplied to the police / IO of the case and the driver was in his employment.

34. On the other hand, Insurance company examined Sh. Piyush Jain, Branch Manager as R3W1. Sh. Piyush Jain stated that a notice u/o 12 rule 8 CPC was sent to the driver and insurer of the offending vehicle no. HR-38H-0144 through Sh. V.K. Verma, advocate. The notice has not been replied or complied with by the addressees. R3W1 stated that the driving licence no. 6477/MTR/07 of the driver, sealed by the police, on verification from the Licencing Authority, Mathura had been found to be fake. The said licence was got verified by insurance company through their investigator Sh. Ajay Kumar Jain. The R3W1 exhibited the copy of notice u/o 12 rule 8 as R3W1/A, postal receipts as B, C and D, certified copy of insurance policy as R3W1/E, report of the investigator in respect of licence no. 6477/MTR/07 as R3W1/F and the report on form 54 with regard to the said licence as R3W1/G. During cross examination, R3W1 stated that they did not get the AD card back and he did not know if they had received back the registered envelop which they had sent to the driver and owner.

35. The contention of counsel for insurance company is that the driving licence no. 6477/MTR/07, Mark X was found to be fake and therefore the insurance company was not liable to pay the compensation. On the other

hand, counsel for respondent no. 1 and 2 contended that respondent no. 1 was having valid driving licence issued from Hardoi Licencing Authority and the driver has no concern with the driving licence Mark X. 36. I have gone through the material on record. In the judgment National Insurance Company Vs. Swaran Singh and others, AIR 2004' Hon'ble Supreme Court held:-

“ It is also well known that the provisions contained in different expressions are ordinary construed differently. The words 'effective licence' used in S-3, therefore, cannot be imported for sub-section(2) of S- 149 of the Motor Vehicles Act. The words 'duly licensed' used in sub-section (2) of S-149 are used in past tense. The Insurance Companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them. The Court cannot lay down any criteria as to how said burden would depend upon the facts and circumstances of each case. Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insured under S-149(2) of the Act. The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case' .

16. In the another ruling of '**United India Insurance Company Ltd. Vs. Lehru and others**, 1(2003) ACC 611 (SC), it is ruled as here under:-

“ 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 would 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 RTOs, 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 be absolved 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 noticed 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 Skandia's Sohan Lal Passi's and Kamal's cases. We are in full agreement with the views expressed therein and see no reason to take a different view”.

37. The insurance company has examined Sh. Piyush Jain, who proved the notice u/o 12 rule 8 CPC but failed to establish that the said notice was served upon the respondent no. 1 and 2. The R3W1, during cross-examination, stated that he did not know if the notice sent by registered post came back to them or not. In the

present matter there are two driving licences on record one licence no. 6477/MTR/07, mark X, issued by Licencing Authority, Mathura and second licence is no. 1353/HAI/2002, Ex. R1W1/1 issued by Licencing Authority, Hardoi and produced by respondent no. 1. The licence no. 6477/MTR/07, Mark X was found to be fake. The insurance company has not got verified the driving licence no. 1353/HAI/2002, Ex.R1W1/1, issued from Licencing Authority, Hardoi and failed to establish that the said licence was not valid. The burden is on insurance company to prove willful breach on the part of insured. Therefore presumption arises that this licence was valid. The insurance company also failed to prove the driving licence 6477/MTR/07, mark X as they failed to get the original licence produced. The respondent no. 1 had stated that he had no concern with driving licence, Mark X. It is clear from the ratio of the above said judgments that insurance company is to establish that there was willful breach on the part of owner or the owner had knowledge of fake licence of the driver, then insurance company can get the recovery rights. It is clear from the record that the respondent no. 2 was shown a licence no. 1353/HAI/2002, Ex. R1W1/1 issued by Hardoi Licencing Authority and the same was a valid licence. The insurance company failed to establish that the driving licence no. 1353/HAI/2002, issued by Hardoi Licencing Authority was not valid as on the date of accident. Even if it is assumed that respondent no. 1 had two licences, the insurance company failed to establish that the owner was aware of the fact of driver having licence, Mark X which was fake. Therefore, it cannot be said that there was willful breach on the part of owner of any policy condition hence no recovery rights can be granted to insurance company. Insurance company failed to establish that there was any willful breach on the part of owner of the vehicle hence not entitled for recovery rights.”

17. It is evident that driving licence no. 6477/ MTR/ 07 issued by licensing authority, Mathura was not found to be genuine. However, Respondent no. 1(Driver) before the Trial Court produced driving licence no. 1353HA/ 201 (Ex.R1W1/ 1). The said licence was not got verified by the Appellant Insurance Company. It is well settled law that initial onus is on Insurance Company to prove that there is willful and conscious breach the terms and conditions of the insurance policy by the owner. Since the Insurance Company failed to prove that the second licence issued by the licensing authority was not genuine, it cannot be said that the onus was discharged by the Insurance Company. It may further be noted that the licence was issued by the Motor Licensing Authority in the year 2002 was not verified whereas the licence which was found to be fake was issued in the year 2007. Thus, the licence issued prior in point of time having not been checked by the Appellant Insurance Company, it will not be permissible for the Insurance Company to aver that the insured committed a willful breach of the terms and conditions of the insurance policy.

18. In view of the aforesaid discussion, MAC APP No. 301/ 2013 is bound to fail. The same is accordingly dismissed.

19. The Appellant Insurance Company is directed to pay the enhanced compensation as stated earlier within a period of six weeks failing which the claimants will be entitled to interest @ 10% p.a. from the date of this order.

20. MAC APP No. 423/ 2013 is allowed in the above terms.

21. The amount awarded by the Claims Tribunal shall be released in terms of the order passed by the Claims Tribunal.

22. The enhanced amount shall be held in Fixed Deposit (for a period of five years) on which Claimant No. 1 shall be entitled to get quarterly interest. On expiry of five years, the amount shall be paid in equal proportion to Claimants No. 1 to 6.

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

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

(G.P. MITTAL)
JUDGE

JANUARY 22, 2015
‘sn’