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

% *Date of Decision : December 17,2015*

+ **MAC.APP No.512/2011**

NEW INDIA ASSURANCE CO.LTD. ..... Appellant
Through: Mr. Abhishek Kumar, Advocate

versus

DHOORA RAM & ORS. .....Respondents
Through: Mr. O.P.Mannie, Adv. for R-1

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

CM No.10903/2011

1. This is an application moved on behalf of the appellant/insurance seeking permission to place on record additional documents i.e. report dated 09.12.2003 by the Investigator in respect of the driving licence of the driver of the offending vehicle issued by Licencing Authority, Gwalior.

2. Heard learned counsel for the appellant/insurance company.

3. The reason given in the application for not filing the report of the investigator at the relevant time is that since the Licencing Authority which issued the licence of the driver of the offending vehicle is in Gwalior and the investigator is also from Gwalior, steps were taken to get the notice served at Gwarlior but nobody turned up.

4. The award in this case has been passed on 15th February, 2011 i.e. after a period of about eight years from the date of report by the Investigator. This period cannot be termed to be so short as to make the insurance

company feel so helpless that witness could not be summoned from Gwalior.

5. The grievance, if any, of the appellant/insurance company about non-appearance of the witness from Gwalior despite service of summons, should have been addressed to the learned Tribunal.

6. The order of the learned Tribunal not granting sufficient opportunity for the above purpose could have been impugned before this Court but no such step was taken. It is also necessary to note that the report was not already placed on record by the insurance company and question of summoning the witness can only be when document has already been filed.

7. In the given circumstances, CM No.10903/2011 is hereby dismissed.

MAC.APP No.512/2011

1. The instant appeal has been preferred by the appellant New India Assurance Company Ltd. impugning the award dated 15th February, 2011 whereby the learned Motor Accident Claim Tribunal has awarded a compensation of Rs.50,031/- to the claimant/injured.

2. The learned Tribunal had not granted recovery rights to the insurance company observing that the FIR has not been lodged by the insurance company against the driver for holding a fake driving licence.

3. The claim petition No.226/2010 was filed by Kanwar Pal claiming compensation for the injuries suffered by him in the accident which occurred on 24.04.1996 at about 3.00 am when truck No.DHG-1201 overturned due to rash and negligent driving of driver Sh.Ram Kishan - respondent No.3 herein. The claimant was a loader on the said truck at the time of accident.

4. Written statement was filed by the appellant/insurance company admitting that the vehicle has been insured but taking the plea that in case the driver of the offending vehicle is found to be not holding a effective and

valid driving licence, the insurance company would not be liable to pay the compensation.

5. During course of hearing of this appeal, learned counsel for the appellant/insurance company has submitted that the appellant/insurance company is not challenging the award on quantum of compensation awarded to the injured and restricting the prayer only to the extent of grant of recovery rights.

6. The grievance of the appellant/insurance company is in respect of the observation made in para 11 and 12 of the award wherein verification report in respect of the driving licence of the driver/respondent No.3 herein is referred to by the learned Tribunal to the effect that driving licence was found to be fake.

7. From a bare perusal of the impugned award as well the submissions made by learned counsel for the insurance company, it is clear that no notice under Order XII Rule 8 CPC has been served on the owner/driver of the offending vehicle calling upon them to produce the original driving licence. Further no witness has been examined from the Licensing Authority, Gwarlior to prove that the driving licence was not issued by the said Authority. Even the report of the Investigator has been referred to by R3W1 Sh.Y.R.Malik who has stated that the insurance company has asked the associate office of the company at Gwalior to verify the driving licence. Thus, irrespective of the fact whether recovery rights have been denied on account of failure of the insurance company to lodge the FIR or their failure to prove the breach of terms and conditions of the insurance policy by the insured, the fact remains that insurance company failed to discharge the burden put on it to prove the breach of terms and conditions of the insurance policy by the insured.

8. Legal position is well settled that merely because the driving licence is fake, is no ground to exonerate the insurance company of its liability.

9. 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, insurer has to prove that the insured was guilty of negligence and 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 one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving negligence on the owner's part.

10. In the case of United India Insurance Company Ltd. v. Lehru & Ors. 2003 (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. The relevant para of the report is extracted as under:-

> *"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."

11. In the case titled as <u>*New India Assurance Co.Ltd. vs. Sanjay Kumar & Ors.*</u> in MAC.APP. No.28/2005 decided on 17th April, 2007, a Co-ordinate Bench of this Court 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. It would be enough for the owner to establish that he saw the driving licence of the driver when vehicle was entrusted to him and that the same appeared to be a genuine licence. It would be enough for the owner, to discharge the onus which has shifted on to his shoulders, to establish that he tested the driving skill of the driver and satisfied himself that the driver was fit to drive the vehicle. Law does not require the owner to personally go and verify the genuineness of the licence produced by the driver."*

12. In the absence of any evidence being led by the insurance company to prove that the driving licence was found to be fake, the initial burden put on

the insurance company to this effect was not discharged. Hence, neither the insurance company can be absolved of its liability to pay the compensation to the third party nor recovery rights can be granted against the owner/driver.

13. The appeal is dismissed.

14. Statutory amount deposited by the appellant/insurance company at the time of filing of the appeal, be refunded to the appellant/insurance company.

CM No.10902/2011

Dismissed as infructuous.

(PRATIBHA RANI)
JUDGE

DECEMBER 17, 2015
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