

\$~1

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

Date of decision: 20th May, 2015

+ **MAC.APP. 532/2012**

IFFCO TOKIO GENERAL INSURANCE CO. LTD..... Appellant

Through: Ms. Shantha Devi Raman, Adv.

versus

PARSAN & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant IFFCO TOKIO General Insurance Company Limited impugned the judgment dated 17.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹2,42,600/- was awarded in favour of Respondents no.1 and 2 for the death of their bachelor son Shiv Karan in a motor vehicular accident which occurred on 02.11.2008.
2. The only ground of challenge raised by the Appellant Insurance Company is that the Appellant successfully proved the wilful breach of the terms and conditions of the insurance policy by establishing that the vehicle involved in the accident which was a commercial vehicle

was being driven without a valid permit and that the driver did not possess a valid driving licence to drive the vehicle involved in the accident, yet the Claims Tribunal not only fastened the liability on the Insurance Company but also declined to grant any recovery rights to the Appellant.

3. I have the Trial Court record before me.
4. It is not in dispute that the insured vehicle which caused the accident was a TSR bearing registration No.DL-1RK-4195, it being the commercial vehicle was a transport vehicle. It goes without saying that there was a requirement to possess a valid permit to drive the earlier said vehicle and also that the driver must possess a valid driving licence to drive the category of vehicle which was involved in the accident.
5. The Appellant Insurance Company made all efforts to obtain the details of the permit and the driving licence held by the driver from the owner (Respondent Balkishan) and the driver (Respondent Paramjit Singh). In this connection, a reference may be made to the order dated 14.07.2011 passed by the Claims Tribunal whereby notice of the application to produce the permit in respect of the vehicle involved in the accident was given to Respondent no.2, *i.e.* the owner

of the vehicle. On the next date, *i.e.* on 13.09.2011, the learned counsel for the owner sought some extra time to produce the permit. He(Respondent no.2), however, failed to produce the permit.

6. A notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) Ex.R3W2/2 (along with postal receipts) was duly proved to have been served upon the owner and driver requiring them to produce the driving licence, original insurance policy and copy of the permit in respect of the vehicle involved in the accident. The owner and driver, however, failed to produce the same. Thus, for want of production of the permit, an adverse inference has to be drawn against Respondent Balkishan, owner of the vehicle.
7. As far as driving licence is concerned, although no driving licence was produced by the Respondents, but a copy of the driving licence No.3119/F/97 which was valid for motorcycle and LMV only was available on record. The same was got verified from the Transport Authority. The validity of this driving licence is not disputed by the learned counsel for the Appellant. At the same time, it is urged that on the strength of this driving licence, Respondent Paramjit Singh was not competent to drive TSR which is a transport vehicle. It is also urged that the Claims Tribunal erred in relying on the report of the

Transport Authority to say that since gross weight of the vehicle was less than 7,500/- kg., the driver was competent to drive a transport vehicle. This question was gone into at great length by this Court in *Shashi Bhushan & Ors. v. National Insurance Co. Ltd. & Ors.*, MAC APP.517/2007, decided on 31.05.2012. Para 9 to 11 of the report are extracted hereunder:-

“9. In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria*, (2008) 3 SCC 464, His Lordship Mr. Justice S.B. Sinha (as he then was) drew a distinction between the validity of a licence for LMV, to drive a light goods carriage or a light passenger vehicle before amendment in form 4 prescribed under Rule 2 (e) in the Central Motor Vehicles Rules, 1989 (the Rules). Before the amendment in 2001 the entries Medium Goods Vehicle and Heavy Goods Vehicle existed which have been substituted by a “transport vehicle”. It was held that a person holding a licence for Light Motor Vehicle after 28.03.2001 would not be competent to drive a “transport vehicle”. In the aforesaid case, the accident occurred on 09.12.1999. It was in that context that it was held that the driver by holding a valid licence for LMV was authorized to drive a Light Goods Vehicle as well. In this case, the accident took place on 21.04.2005 and thus the driver who was holding a driving licence to drive a Light Motor Vehicle was not competent to drive a transport vehicle. Paras 12 to 17 of the report are extracted hereunder:-

“12. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

13. The word "Form" has been defined in Rule 2(e) to mean a Form appended to the rules.

“I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Medium goods vehicle

(g) Heavy goods vehicle

(j) Motor vehicles of the following description:....”

After amendment the relevant portion of Form 4 reads as under:

“I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Transport vehicle

(j) Motor vehicles of the following description:....”

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium good vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

15. "Light Motor Vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof read as under:

“Authorisation to drive transport vehicle

Number.... Date....

Authorised to drive transport vehicle with effect from.... Badge number....

Signature.... ...

Designation of the licensing authority Name and designation of their authority who conducted the driving test.”

16. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods carriage vehicle".

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

17. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.”

10. In National Insurance Co. v. Kusum Rai, (2006) 4 SCC 250 a driver holding a driving licence to drive a Light Motor Vehicle was held to be not entitled to drive a taxi.

11. Subsequently, in New India Assurance Company Limited v. Roshanben Rahemansha Fakir & Anr., (2008) 8 SCC 253; the Supreme Court differentiated between a transport vehicle and non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a light goods vehicle. It was further held that the person must possess the licence for the class of vehicle involved in the accident.”

8. Since the driving licence which was available on the record was valid for driving LMV only and not LMV (Transport) and no other licence was produced by the insured, it has to be held that the driver possessed valid driving licence to drive Light Motor Vehicle (LMV) only and not a transport vehicle. Thus, in view of the judgment in *Shashi*

Bhushan & Ors. v. National Insurance Co. Ltd. & Ors., MAC APP.517/2007, decided on 31.05.2012; National Insurance Co. v. Kusum Rai, (2006) 4 SCC 250; and New India Assurance Company Limited v. Roshanben Rahemansha Fakir & Anr., (2008) 8 SCC 253, the driver was not competent to drive the vehicle involved in the accident.

9. The owner has not come forward with any explanation as to under which circumstances the vehicle was entrusted to the driver. The Appellant discharged the initial onus of proving conscious and willful breach on the part of the insured and is, therefore, entitled to recover the amount of compensation paid from the insured in view of the judgment of this Court in *Oriental Insurance Company Limited v. Rakesh Kumar & Ors., MAC APP.329/2010, decided on 29.02.2012.*
10. The Appeal is accordingly allowed. It is directed that the Appellant will be entitled to recover the amount of compensation paid in execution of this very judgment without having recourse to independent civil proceedings.
11. The amount deposited shall be released in favour of Respondents no.1 and 2.

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

(G.P. MITTAL)
JUDGE

MAY 20, 2015

vk