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

*Decided on: 10<sup>th</sup> April, 2015*

+ **MAC.APP. 492/2010**

ORIENTAL INSURANCE CO LTD. .... Appellant  
Through: Mr.Pradeep Gaur, Advocate.

versus

BIJENDER SINGH & ORS. .... Respondents  
Through: None

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

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

1. The Appellant Oriental Insurance Company Limited seeks rights to recover the compensation paid in pursuance of the judgment dated 06.05.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) from the insured.
2. The ground set up by the Appellant is that it successfully proved willful and conscious breach of the terms and conditions of the insurance policy but in spite of this, it was not only made liable to pay the compensation but even no recovery rights were granted.

3. While dealing with the issue of liability, the Claims Tribunal held as under:-

*“15. The Insurance Company had taken a plea that the driver of the offending vehicle was not carrying licence at all. It has drawn the attention of the court towards the certified copies of the chargesheet which carries prosecution of the driver for the offence u/s. 3/181. I have heard the insurance company at length on this point.*

*16. Though the charge-sheet which have been filed contains the prosecution of driver for the offence u/s. 3/181 M.V. Act as is clear from the certified copies of the criminal record, but the filing of the charge sheet under Section 3/181 is not enough. It was held by Hon'ble High Court of Delhi in Oriental Insurance Company vs. Sonia, 158 (2009) Delhi Law Times 111, that mere filing of the challan in a criminal court under Section 3/181 is not enough. There should be evidence on record to show that in fact the driver of the offending vehicle was convicted under Section 3/181 Motor Vehicles act.*

*17. In these circumstances, in view of aforesaid case law the plea of insurance company stands rejected.”*

4. I have the Trial Court record before me. Not only was the driver prosecuted for an offence punishable under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 (the Act) but also notice under Order XII rule 8 CPC (Ex.R3W1/2) was duly

served by the insurance company upon the insured to produce the insurance policy and a valid driving licence of the driver.

5. The Insurance Company could not have done anything better than proving the challan for the offence punishable under Section 3 read with Section 181 of the Act and serve a notice under Order XII Rule 8 CPC upon the insured to produce a valid driving licence of the driver.
6. Thus, in my view, the Appellant Insurance Company did whatever was in its power to prove that there was conscious and willful breach of the terms and conditions of the insurance policy. The onus thereafter shifted upon the owner to prove the circumstances under which the driver was engaged and whether he had taken sufficient precautions not to commit breach of the terms and conditions of the policy. In this connection, a reference may be made to the judgment of this Court in *New India Assurance Company Ltd. v. Sanjay Kumar & Ors.*, ILR (2007) 11 Delhi 733, wherein it was held as under:-

*“23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of*

*having breach the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.*

*24. That apart, what more can be insurance company do other than to serve a notice under Order 12 Rule 8 of the Code of Civil Procedure calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company.”*

7. The Appellant therefore, has proved that there was willful and conscious breach of the terms and conditions of the insurance policy. Although in view of the judgments of the Supreme Court in *Sohan Lal Passi v. Sesh Reddy*, (1996) 5 SCC 21; *National Insurance Company Limited v. Swaran Singh & Ors.* (2004) 3 SCC 297 and *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, the Appellant was under obligation to satisfy third party liability, but at the same time, the Appellant is entitled to recovery rights from the owner of the offending

vehicle.

8. The appeal is consequently allowed. It is directed that the Appellant will be entitled to recover the amount of compensation paid along with interest from Respondent no.2 (owner). Respondent no.2 shall deposit the compensation paid by the Appellant with the Claims Tribunal with a notice to the Appellant within eight weeks, failing which the Appellant shall be entitled interest @ 9% per annum from the date of deposit/payment made by the Appellant.
9. The Appellant shall be entitled to recover the amount in execution of this very judgment without having recourse to independent civil proceedings.
12. The appeal is allowed in above terms.
13. Pending applications also stand disposed of.
14. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

**(G.P. MITTAL)**  
**JUDGE**

**APRIL 10, 2015/vk**