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

Decided on: 15th January, 2015

\+ **MAC.APP. 719/2012**

TATA AIG GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Sameer Nandwani, Advocate

versus

AKANSHA & ORS. ..... Respondents

Through: Mr. A.K. Mishra, Advocate for Respondent no.3

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

<u>J U D G M E N T</u>

<u>G. P. MITTAL, J.</u> (ORAL)

1. The appeal is directed against a judgment dated 21.04.2012 whereby a compensation of Rs.1,07,000/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 04.05.2009.

2. At the time of hearing, the learned counsel for the Appellant presses the appeal only to the extent of seeking recovery rights against the insured. It is urged by the learned counsel for the

Appellant that it was amply proved that the driver did not possess a valid driving licence at the time of the accident and, that is why, he was also challaned for driving the vehicle without any licence(at the time of accident). The driver and the owner had also contested the petition filed by Respondent no.1 before the Claims Tribunal. The Appellant Insurance Company having discharged the initial onus of proving the breach of the terms and conditions of the policy, it was for the owner to have shown that the owner had taken sufficient steps to ensure that the vehicle is not driven by a driver without holding a valid licence.

3. Mr. A.K. Mishra, the learned counsel appearing on behalf of the owner (Respondent no.3) opposes the appeal. The learned counsel for Respondent no.3 refers to the driving licence available on page 103 of the appeal being MAC.APP. 1072/2012 and also on the Trial Court record. He submits that the licence was issued on 07.03.2000 and was valid upto 05.11.2012. It is urged by the learned counsel for Respondent no.3 that Respondent no.3 did not have any knowledge of expiry of the driving licence held by the driver. The issue of breach of insurance policy was detailed by the Claims Tribunal in paras 28 to 30 of the judgment, which are extracted hereunder:

> *"28. R3W1 has stated that the respondent no.1 was issued license on 07.03.06 which expired on 06.03.09. Thereafter, it was renewed w.e.f.*

11.06.09 and on the day of accident i.e. on 04.05.09 the license was not valid. In this case I.O has filed the charge sheet adding the section 3/181 of Motor Vehicle Act stating that the respondent no.1 did not have valid driving license on the date of accident. R3W3 has stated that he had investigated the matter and found that the license of respondent no.1 was not valid on the day of accident. R3W2 proved the policy Ex.R3W2/A as per which a person must have a valid and effective license to drive the offending vehicle.

29. The law provides one month's grace period for renewal of expired license. Thus, the driving license even having expired at the time of accident cannot be held to be invalid. Driving license continues to exist despite expiry of period of its validity unless the driver has been disqualified, he continues to be duly licensed. In the case of Ramesh Chand Vs. United India Insurance Company 1991 (1) ACC 78, the license of the driver of the offending vehicle had expired a one month before the date of accident and was renewed few months after the accident. Relying upon the decision in Ramphal Vs. Krishna Makkar 1989 ACJ 1126, it was held that if the driver at the time of accident had a valid driving license or had held one earlier, the insurance company was liable ipso facto. In the case of K G Srinivas Murthy Vs. Habib Khatun 2002 ACJ 557, it was held that mere nonrenewal of license on the date of accident had not contributed to the causing of accident, more so when there was no case that the driver does not know driving or the driver has not been disqualified from obtaining a driving license. It was observed that mere fact that the driver of the *offending vehicle had not got the driving license renewed on the date of accident and got it subsequently would not amount to breach of condition of the policy as it cannot be said that there was violation of the conditions of the exclusion clause.*

30. *Admittedly, the respondent no.1 did not have a valid and effective license as on the date of accident. However, there is no denial from the fact that he had a valid license prior to and after the date of accident and he was not disqualified from obtaining driving license. Nor there is any evidence that nonrenewal of the license on the date of accident had contributed to the causing of the accident. It was held in the case of National Insurance Co. Ltd. Vs. Swarn Singh & Ors. 2004 (3) SCC 297 that mere absence, fake or invalid license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the 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 policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time. In the instant case the offending vehicle was a Govt. vehicle registered in the name of IGNC for Arts. The respondent no.1 was an employee of IGNC for Arts. As usual in routine the vehicle was entrusted to him for driving. There is nothing to indicate that the insured intentionally omitted to take reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle by a duly licensed driver or one who was not disqualified*

> *to drive at a relevant time. For the reasons stated above, I am of the view that the insurance company cannot be exonerated from its liability to pay compensation to the petitioner in the facts and circumstances of this case."*

4. I have before me the Trial Court record. I have perused the statement made by Rohtash Singh(R3W1), LDC in the office of Transport Authority, Sheikh Sarai, who was initially examined on 04.11.2011. He was categorical that the application for renewal of the driving licence was moved on 11.06.2009 and the licence was renewed on the same date. The Appellant further examined Pankaj Bedi as R3W3 who proved his report Ex.R3W3/A and Ex.R3W3/B. He testified that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. His testimony was unchallenged as no question was put to him in cross-examination. Thus, it was established on record that Respondent no.2 did not possess a valid licence on the date of the accident. It was noted by the Claims Tribunal that the licence had expired on 06.03.2009. The licence will be valid for a period of 30 days after the expiry of the licence in view of the provision of Sec. 15(1) Proviso of the Motor Vehicles Act, 1988. Thus, the Appellant discharged the initial onus to prove that the owner/insured committed breach of the terms and conditions of the insurance policy. The owner became aware that on the date of the accident that the driver did not possess

any valid licence. Now, the onus has shifted to the owner/insured to prove that he had taken sufficient steps to ensure that there was no breach of the terms and conditions of the policy. No witness regarding the same has been produced by Respondent no.3 in this regard. Therefore, it shall have to be assumed that there was willful and conscious breach of the terms and conditions of the insurance policy. In this regard, a reference is made to the judgment of this Court in *New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR 2007(II) Delhi 733*. In Para 22 of the report, it was 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………….."*

5. In view of this, the Trial Court's finding that the Appellant was not entitled to recovery rights cannot be sustained. The impugned judgment to the extent is set aside and the Appellant is granted recovery rights to recover the compensation paid in

execution of this very judgment from Respondents no.2 and 3 without having recourse to independent recovery proceedings.

6. The appeal is disposed of in above terms.

7. Pending applications stand disposed of.

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

(G.P. MITTAL)
JUDGE

JANUARY 15, 2015
pst