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

Judgment Reserved on: December 01, 2015

% *Judgment Delivered on: December 09, 2015*

+ **MAC.APP. 752/2011**

RELIANCE GENERAL INSURANCE CO LTD Appellant
Through: Mr.Sameer Nandwani, Advocate.

versus

SEVA RAM & ORS Respondents
Through: Mr.Vijendra Singh Baghel,
Advocate for R-1 to R-6.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant/insurance company has preferred this appeal against the award dated 07.05.2011 passed by learned Motor Accident Claims Tribunal in Claim Petition No.391/2010 whereby the claimants have been awarded a total compensation of Rs.8,37,850/- with interest @ 8% per annum for the death of Sh.Joginder Kumar in the fatal accident.
2. The grievance of the appellant/insurance company agitated before this Court is restricted to grant of recovery rights. Mr.Sameer Nandwani, Advocate appearing on behalf of appellant/insurance company has drawn the attention of this Court to the fact that the driving licence issued to the

driver Balram Singh, who is respondent no.7 before this Court, was only for driving light motor vehicles (LMV). On the date of accident, the driver Balram Singh was driving a Taxi, which is a commercial vehicle. The learned Tribunal failed to grant recovery rights to the insurance company despite the fact that the offending vehicle bearing registration No.HR-55-FT-9021 was a taxi being driven by a person not holding driving licence to drive commercial vehicle, hence the recovery rights should have been granted to the insurance company. Learned counsel for the appellant has relied upon Sanjay vs. Suresh Chand & Ors. 2012 VII AD (Delhi) 561, National Insurance Company ltd. vs. Shadab & Ors. 2014 I AD (Delhi) 421 and Oriental Insurance Co. Ltd. vs. Cheruvvakkara Nafeessu & Ors. (2001) 2 SCC 491 in support of his contentions.

3. I have considered the submissions made on behalf of the appellant/insurance company and carefully gone through the record.

4. Since the appellant/insurance company has not challenged the award on the point of quantum and no appeal has also been preferred by the driver/owner of the offending vehicle, findings of the learned Tribunal in respect of the quantum of compensation as well on the issue of negligence have attained finality.

5. Now the only issue remains for consideration is as to whether in the absence of endorsement on the driving licence to drive a commercial vehicle, the insurance company can claim it to be breach of terms and conditions of the insurance policy by the driver and owner of the

offending vehicle so as to claim recovery rights. The learned Tribunal has declined to grant recovery rights to the insurance company for the following reasons:-

21. Now coming to the next aspect as to who is liable to pay the compensation. In this matter, the Ld. Counsel for respondent no.3 has sought recovery rights on the ground that the driving licence of the respondent No.1 was not valid and effective for the period of accident. To prove this fact, he has summoned a witness from the RTO office, Bulandshahar, U.P. who has been examined as R3W2 and has deposed that as per the record, the driving licence no.NT104576/BSR has been issued from their Authority on 6.02.2006 in the name of Sh.Balram Singh, S/o Sh.Ramesh Singh and was valid upto 5.01.2026. This licence was endorsed for category of LMV (T) w.e.f. 30.05.2008 to 29.05.2011 and has been issued from their Authority and he can say that on 31.12.2007 this licence was not valid for driving the commercial vehicle. In the entire written statement, it has nowhere come that the offending vehicle was a commercial vehicle at all. The petitioners have stated the offending vehicle being LMV/car in para 14 of the petition. In reply to this para, there is simple denial of this fact and the petitioners are sought to be put to strict proof thereof. The respondent No.2 is definitely the owner of the offending vehicle and is running M/s Paras Tour & Travels and the vehicle was duly insured with the respondent no.3. There is no cross examination by the Ld. Counsel for respondent no.3 on this aspect that the offending vehicle was a commercial vehicle at all. Although R3W1 has deposed that he is well conversant of the facts of the case and the offending vehicle was owned by the respondent no.2 and the same is duly insured by the respondent no.3 and it is submitted that in the verification the respondent no.1 has submitted the copy of the driving licence which was issued on 6.01.2006 but it is nowhere stated by any witness of the respondent no.3 that the offending vehicle was a

commercial transport vehicle. I have perused the driving licence. The driving licence otherwise is valid from 6.01.2006 to 5.01.2026 i.e. the period during which the accident has occurred. It is mentioned in this licence that the driver is authorized to drive as LMV for the purpose of transportation. The licence has been issued to drive the motorcycle/LMV. The driving licence otherwise is stated to be valid and is covering the period of the accident. Therefore, the Court is of the opinion that since the driving licence of the respondent No.1 was valid for driving the offending vehicle and since it has not been proved by the respondent no.3 that the vehicle which was being driven by the respondent no.1 was a commercial vehicle and a mere fact that the respondent no.2 is running a Tour and Travels company is not sufficient to come to the conclusion that the vehicle of the respondent no.2 which was duly insured with the respondent no.3 must be a commercial vehicle. Therefore, the Court is of the opinion that the respondent no.3 is not entitled for recovery rights. It is not disputed that vehicle of respondent No.2 was duly insured with respondent no.3 and this fact otherwise has been admitted by respondent no.3. Therefore, although the liability of all the respondents is joint and several yet the liability of the respondent no.3 to pay the compensation to the petitioners would remain primary.

6. Learned counsel for the appellant/insurance company has referred to the statement of R3W2 Sh.Rishi Pal Singh, LDC, RTO Office, Bulandshahar, U.P. who has deposed that as per office record, the driving licence No.NT104576/BSR has been issued from their authority on 06.02.2006 in the name of Sh.Balram Singh and was valid upto 05.01.2026. He has also deposed that this licence was endorsed for category of LMV (T) w.e.f. 30.05.2008 to 29.05.2011 and was not valid

for driving the commercial vehicle on 31.12.2007 i.e. on the date of accident. Learned counsel for the appellant/insurance company has submitted that the learned Trial Court has failed to appreciate the testimony of R3W2 Sh.Rishi Pal Singh and that the registration number of the offending vehicle itself states that the said vehicle was a taxi and respondent No.7 Balram Singh was not authorized to drive the commercial vehicle on the date of accident.

7. I do not feel the necessity to discuss the decision reported as upon Sanjay vs. Suresh Chand & Ors., National Insurance Company Ltd. vs. Shadab & Ors. and Oriental Insurance Co. Ltd. vs. Cheruvvakkara Nafeessu & Ors. relied upon by the learned counsel for the appellant/insurance company for the reason that in a recent decision reported as S.Iyyapan vs. United India Insurance Company Limited (2013) 7 SCC 62, this issue has been considered at length. The relevant paragraphs no.13, 14, 18 and 19 are extracted hereunder:-

*'13. In the case of **National Insurance Co. Ltd. v. Swaran Singh and Ors.** MANU/SC/0021/2004 : (2004) 3 SCC 297, a 3-Judge Bench of this Court held as under:*

47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a

jeep and it is not necessary that he must have driving licence both for car and jeep separately.

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

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73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence 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 the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, 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 wherefore would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) 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 the 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 insurer under Section 149(2) of the Act.

(vii) 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 fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the

insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the

money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with the proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

14. In the case of *National Insurance Co. Ltd. v. Kusum Rai and Ors.* MANU/SC/1533/2006 : (2006) 4 SCC 250, the Respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision

*of this Court in **New India Assurance Company v. Kamla** (supra) held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in **Oriental Insurance Co. Ltd. v. Nanjappan** MANU/SC/0122/2004 : 2004(13) SCC 224 argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.*

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18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.'

8. Reverting to the facts of the case in hand, the driver was authorized to drive LMV and at the time of accident, he was driving LMV only though the endorsement to drive a taxi was not on his driving licence on

that date. Statement of Sh.Rishi Pal, LDC, RTO Office, Bulandshahar, U.P., who has been examined as R3W2 by the appellant/insurance company, has proved that the driver was holding a valid driving licence for category of LMV (NT) and the licence was valid upto 05.01.2026. the licence was endorsed for the category of LMV(T) w.e.f. 30.05.2008 to 29.05.2011.

9. There is no evidence that absence of endorsement to drive a commercial vehicle was the reason for the accident or the breach was so fundamental as to absolve the insurance company of its liability to pay the compensation.

10. In view of the decision of the Supreme Court in S.Iyyapan's case (Supra), merely because the driver did not get the endorsement in the driving licence to drive a taxi, which is a light commercial vehicle, in itself is no ground to hold the insurance company not liable to pay the compensation. It is also worth noting here that after recording finding to the above effect, no recovery rights have been granted to the insurance company.

11. In view of the above discussion, I do not find it to be a fit case where recovery rights should be granted to the insurance company

12. Appeal is dismissed.

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

14. LCR be sent back alongwith copy of this order.

CM No.15706/2011

Dismissed as infructuous.

CM Nos.2034/2015 & 6974/2015 (for release of compensation amount)

1. The release of compensation amount shall be governed by the order/award passed by the learned Tribunal in this regard.
2. Applications stand disposed of accordingly.

**(PRATIBHA RANI)
JUDGE**

DECEMBER 09, 2015

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