

\$~23

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

Date of decision: 29th April, 2015

+ **MAC.APP.1178/2012**

UNITED INDIA INSURANCE COMPANY LTD..... Appellant

Through: Mr. Navdeep Singh, Adv. with
Mr. Ankit Mahajan, Adv. &
Mr. D.D. Singh, Adv.

Versus

PRADEEP KUMAR & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. By virtue of this appeal, the Appellant United India Insurance Company Limited seeks exoneration or in the alternative recovery rights against the insured on the premise that the Appellant proved conscious and willful breach of terms and conditions of the insurance policy; and therefore, the Appellant ought not to have been made liable to pay the compensation.
2. It is urged by the learned counsel for the Appellant that the licence seized by the Investigating Officer Mark 'X' expired on 12.09.2010 and the accident had taken place on 04.11.2010. As per Section 14 of

the Motor Vehicles Act, 1988, the licence will remain valid only for a period of 30 days after the date of expiry. In the absence of renewal within the stipulated period, the driver shall be deemed to be driving the vehicle without a valid driving licence. It is further contended that notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 Ex.R3W1/B dated 12.06.2011 was issued to the insured to produce the policy of insurance and the driving licence, if any, possessed by the driver. Neither the said notice was replied to nor any licence was produced by the insured.

3. It is contended that the licence, although it had expired was got verified from the concerned RTO and the same was found to be fake and report Ex. R3W3/1 in this regard was obtained by the Appellant's investigator and was proved by R3W3 Mr. Raj Kumar, LDC, Licensing Authority, Agra, U.P.
4. Learned counsel has also referred to the statement of R3W2 ASI Bajrang Lal, who had also verified the driving licence and found it to be fake. It is urged that in the circumstances stated above, the 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.

5. It is well settled that initial onus is on the insurance company to prove that there was willful breach of the condition of policy. The onus was discharged on proving the report Ex.R3W3/1 and serving a notice on the insured to produce a licence. The onus then shifted on the insured to prove that he took adequate steps not to commit the breach or in other words that the breach on his part was not willful. In this connection, a reference may be made to the judgment of this Court in *New India Assurance Co. Ltd. v. Sanjay Kumar and Ors.*, ILR 2007(II) 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 the 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.”

6. Since the Appellant did whatever was in its power to prove breach of the terms and conditions of the insurance policy, there is no escape from the conclusion that there was conscious and willful breach of the terms and conditions of the policy on the part of the insured. Although the Appellant was under an obligation to discharge its statutory liability in view of the judgment of Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 and the judgment of this Court in *Oriental Insurance Company Limited v. Rakesh Kumar & Ors.*, MAC APP.329/2010 decided on 29.02.2012, yet it was entitled to recover the amount of the compensation paid from the insured.
7. Thus, the Appellant is granted recovery rights. It shall be entitled to recover the compensation paid in execution of this very judgment without having recourse to independent proceedings for recovery of the compensation paid.
8. The appeal is allowed in above terms.
9. Statutory amount, if any, deposited shall be refunded to the Appellant insurance company.

10. Pending application, if any, also stands disposed of.

(G.P. MITTAL)
JUDGE

APRIL 29, 2015

nn