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

Decided on: 9th February, 2015

\+ **MAC.APP. 1096/2014**

AMIT KUMAR

..... Appellant

Through: Mr.Anuj Jain, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC for Respondent no.1/UOI.
Mr. Abhishek Kumar, Advocate for Respondent no.3.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. There is twin challenge to the judgment dated 30.07.2014 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.1,00,000/- was awarded in favour of Respondent no.1 in respect of damage to army vehicle BA no.95D-101349-E, LY3 Ton Shaktiman which met with an accident with truck bearing no.HR-55A-1616 which was owned by Appellant Amit Kumar.

2. It is urged that the damage to the extent of Rs.1,00,000/- was not proved and that the Claims Tribunal erred in holding that there was willful breach of the terms and conditions of the Insurance policy on the part of the Appellant making the Insurance Company entitled to recover the compensation paid from the Appellant.

3. The appeal must succeed on the second ground.

4. I have the Trial Court record before me. While dealing with the question of liability, the Claims Tribunal in paras 24 to 30 held as under:

> *"24. As far as liability is concerned, the insurance company has come out with the defence that the driver of the offending vehicle did not have a valid licence. In order to rebut this, R2W1 Shri Amit Kumar has stated that he had employed R1 as driver after seeing his driving licence no.N4 28/AG/99 issued from Transport Authority, Agra. He has further stated that he also got verified the aforesaid DL from the concerned transport authority and the verification report is Ex.R2W1/2.*
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> *25. R2 Amit Kumar has also brought one witness R2W2 Anand Swarup, Senior Assistant, RTO Office, Agra who in his testimony has stated that DL bearing no.N4 28/AG/99 is issued in the name of one Ram Swarup S/o Shri Krishan Pal in the category of LMV+ motorcycle issued on 09-12-1999 and valid up till 08-12-2019, an endorsement for driving HTV was made on aforesaid licence on 27-12-2003 to 26-12-2006, copy of relevant page of the register is Ex.R2W2/A. He further stated that he has seen the verification report dt.04-10-2004 of Licencing Authority, Agra*

which is already Ex.R2W1/2 is not issued from their authority as per official record.

26. Realising the mistake R2 Amit Kumar has filed another affidavit Ex.R2W1/X in which he has stated that DL Verification has been done through R1 and it is only R1 who had furnished the verification report dated 04-10-2004 to him and at that time he bonafidely believed the verification report and did not realise that it was a false report.

27. There is serious contradiction between the earlier statement made by R2 Amit Kumar on 30-05-2012 and later statement made on 19-03-2014. In the first statement, he has stated that "he had got verification of DL of R1 from authority at Agra" wherein in the second statement, he has stated that "R1 himself got the verification done and handed over the report to him." Had the DL Verification Report be done by R1, Amit Kumar should have mentioned this fact in his first statement itself. It is only after the concerned official came from Agra Authority and deposed that verification report is false, realising the mistake Amit Kumar filed another affidavit taking a different stand. In the entire scenario it is apparent that R2 knew that DL of R1 is fake and in order to shield this fact Amit Kumar has tried to make out a false case that first he has seen the DL of R1 which was alright and then got verification done of the same DL which had wrongly shown that DL no.N4 28/AG/99 was issued in the name of Mohd. Idrish/R1. Natural Corollary is that at the time of allowing the R1 to drive the vehicle R2 knew that he was not having a valid licence.

28. In the cross examination of Amit Kumar, it is elicited as under:
"It is correct that I have submitted driving licence verification report of Mohd. Idrish during the present

proceedings. We have got the verfication report of driving licence through the driver after filing of present case."

29. From the above, it is amply clear that verification report was procured after 2005 when the case was filed whereas the verification report is dated 04-10-2004 which is much prior to the filing of the present case. This itself shows that the entire verification report was procured by R2 Amit Kumar and from the very beginning, he knew that the DL was fake and the verification report of the DL is fake.

30. In such a situation of the matter, since the liability of the insurance company is statutory, therefore, the principle of "Pay and Recover" shall apply. Thus, the insurance company is entitled to get the amount recovered from R2 Amit Kumar."

5. It is not in dispute that the Appellant had placed on record a verification report dated 04.10.2004 which showed that driver Idrish was entitled to drive HTV *w.e.f.* 24.06.2003. It is also stated in the verification report that the driving licence was issued on 31.03.1999 which was valid upto 23.06.2006. Admittedly, this accident took place on 11.04.2004. It is thus, evident from the verification report Ex.R2W2/2 placed on record that the driver held a valid and effective driving licence at the time of accident and hence, the Appellant would have no liability having taken an insurance cover for third party liability.

6. The learned counsel for the Appellant has taken me through his Affidavit Ex.R2W1/A. In para 4 of the Affidavit, it was stated

by the Appellant that *the deponent also got verified the aforesaid driving licence from the concerned transport authority, the verification report of the same dated 4/10/2004 is Ex.R2W1/2.*

7. The Appellant had also taken steps and summoned a witness from RTO Agra to prove the report Ex.R2W1/2. However, when Anand Swarup, Senior Assistant RTO office, Agra entered the witness box as R2W2, he deposed that licence bearing no.N-428/AG/99 was held by one Ram Swarup son of Sh. Krishan Pal. Thus, report Ex.R2W1/2 which showed that the licence was held by Idrish was a procured one. The important question for consideration is that whether the Claims Tribunal was justified in reaching the conclusion that the report was obtained by the Appellant(owner) himself or that he was a party to the fraud or that he was aware that the report was not genuine. To conclude that the Appellant was aware that the report was not genuine, the Claims Tribunal relied on the earlier Affidavit Ex.R2W1/A wherein the Appellant deposed that he got the driving licence verified from the concerned authority. However, in the cross-examination recorded on 07.05.2014, it was stated that the verification of the driving licence was done through the driver only. The Appellant denied the suggestion that he knew that the driver did not possess a valid driving licence. In further cross-examination on behalf of the counsel for the Insurance Company, the Appellant as R2W1 admitted

that the Appellant stated that the driver was employed six months to one year prior to the accident. He admitted that the verification report of Idrish was submitted during the present proceedings. He also admitted that he (the owner) got the verification report of the driving licence through the driver himself after filing of the case.

8. Had the Appellant known that the licence was not genuine or that the report Ex.R2W2 was a forged one, he would not have summoned the evidence against him to prove that the licence was fake. The *bonafides* of the Appellant were unfortunately taken against him. Simple statement made by the Appellant in his Affidavit that he had got the driving licence verified cannot be considered to imply that he got the driving licence verified personally or that he went to the RTO office himself to get the verification report. From the conduct of the Appellant and examination of R2W2, it is evident that the Appellant believed that report to be genuine.

9. Consequently, the other part of the statement made by the Appellant that he had seen the driving licence bearing no.N-428/AG/99 and that he had taken the driving test of the driver cannot be disbelieved without sufficient material on record. The Appellant did whatever was in his power to satisfy himself that he did not commit breach of the terms and conditions of the insurance policy.

10. The impugned order so far as grant of recovery rights against the Appellant is concerned, cannot be sustained.

11. As far as quantum of compensation is concerned, the learned counsel for the Appellant has referred to the testimony of PW-3 Man Singh who was working as Inspector, Station Workshop, EME, Delhi Cantt and had examined the earlier said damaged vehicle belonging to the army. The learned counsel has referred to the cross-examination of PW-3 and has urged that the damage of Rs.4,48,029.32P was assessed simply because the vehicle was downgraded to Class VI from Class III and the salvage value was Rs.1,92,000/- whereas the market value on the date of the accident was Rs.6,40,000/-. The learned counsel for the Appellant has referred to the cross-examination of PW-3, which is extracted hereunder:

> *"Accident had occurred on 11.04.2004 wherein Lorry 3-Ton 4X4 Shaktiman was damaged. I had carried out the inspection of the aforesaid vehicle on 01.05.2004. The said vehicle was brought to the workshop through recovery van. The said vehicle was 1995 model. Army vehicles are not insured. The vehicle was having market value at Rs.6,40,000/- at the time of accident as per PVR rates. The government vehicles are classified as per rules i.e. if the vehicles runs more than 70,000 km then it will be treated as Class III. The vehicle in question was classified as Class III at the time of accident. The vehicle was having purchased price Rs.9,60,200/- in the year 1995. 70% spare parts are used to be available in the workshop and rest are procured from the market through purchase cell. Since the vehicle*

fell in the category of Class VI therefore, army vehicle is not required to be repaired. In fact it is sent for disposal by depositing with the Salvage Depot and its value came to Rs.1,92,000/- approximately."

12. It is true from cross-examination of PW-3 it was apparent that he did not assess the actual damage and tried to assume it on the basis of down grade of the vehicle. That is why, the Claims Tribunal preferred not to rely on this part of testimony of PW3 and made its own estimate of the damage on the basis of the actual damage caused to the army vehicle. There were damages in as many as 12 parts of the body of the army vehicle. The Claims Tribunal therefore, made a conservative estimate and assessed the damage to the extent of Rs.1,00,000/- instead of the claimed damage to the extent of Rs.4,48,029.32P. Consequently, the award of compensation of Rs.1,00,000/- along with interest @ 7% per annum, cannot be faulted.

13. The appeal succeeds only to the extent that the Appellant shall not be liable to repay the compensation paid by Respondent no.3 Insurance Company, who was made initially liable to pay the compensation with a right to recover it from the Appellant.

14. The appeal is disposed of in above terms.

15. Pending applications also stand disposed of.

16. Statutory amount, if any, deposited as well as the amount

deposited in terms of the order dated 01.01.2015 shall be released to the Appellant with interest, if any, accrued during the pendency of the appeal.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2015
pst