IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

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THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

C.R.P. (NPD) No.306 of 1999
and C.M.P.No.1581 of 1999

National Insurance Co. Ltd.,
Bhavani ... Petitioner / R-3/Insurance Company

Vs.

1. K.Sekaran ... R-1/petitioner in the Claims Tribunal
2. V.Durairaj ... R-2 / R-1 in the Claims Tribunal
3. V.Krishnan ... R-3 / R-2 in the Claims Tribunal

Prayer :- Civil Revision Petition (NPD) filed under Section 115 of the Code of Civil Procedure against the award and decree, dated 31.10.1996, made in M.C.O.P.No.421 of 1995 on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Erode.

For Petitioner : M/s. Souwmya, for, Mr. S.Arunkumar

For Respondents : No appearance, for R-1 and R-2
Mr. M.Guruprasad, for R-3

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O R D E R

Date of accident : 04.06.1995
Date of petition : 17.07.1995
Date of order : 31.10.1996
Date of filing
of revision petition: 07.04.1997

The petitioner K.Sekaran filed a claim petition under Section 166 of the Motor Vehicles Act, claiming a sum of Rs.30,000/- as compensation. The claim petition was filed against the driver (R1), owner of the Lorry (R2) and the insurer of the lorry (R3). The Claims Tribunal, by award dated 31.10.1996, ordered a sum of Rs.2,000/- as compensation and the third respondent Insurance Company was directed to pay the amount ordered. Challenging the same, the Insurance Company has preferred this Revision Petition.

2. It is the contention of the Insurance Company that (a) the driver had a driving licence only to drive heavy passenger vehicle and not heavy goods vehicle and therefore, the driving licence was not a valid driving licence and (b) as the owner of the vehicle committed breach of terms and conditions of the policy by engaging an incompetent driver to drive the vehicle, there cannot be any award as against the revision petitioner, and that the award could be passed

only as against the owner. Whether these grounds are legally valid is the issue to be considered.

3. Earlier, the driver not holding a valid driving license was a good defence to the Insurance Company to avoid liability. In the case of ***Sohan Lal Passi vs P. Sesh Reddy & Ors***. reported in ***1996 SCC (5) 21***, it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner.

4. In case of ***Swaran Singh i.e National Insurance Co. Ltd vs Swaran Singh & Ors***, the Supreme Court has held that, Proving breach of condition would not absolve the Insurance Company until it is proved further that the said breach was with the knowledge of owner and that the breach of the conditions of the policy even within the scope of Section 149(2) should be the material one, which must have been the cause of accident. The relevant observation reads as under :

> "(iv) Sub-section (1) of Section 149 makes it clear that the insurer should pay first to the third parties and recover the same if they are absolved on any of the grounds specified in sub-section (2) thereof. Reliance, in this connection, has been placed on BIG Insurance Co. Ltd. vs. Captain Itbar Singh and Others [AIR 1959 SC 1331] and New India Assurance Company Vs. Kamla & Others

[(2001) 4 SCC 342].

(v) The burden to prove the defence raised by the insurers as regard the question as to whether there has been any breach of violation of policy conditions of the insurance policy has been issued or not, would be upon the insurer.

(vi) ***The breach on the part of the insured must be a wilful one, being of fundamental condition by the insured himself and the burden of proof, therefore, would be on the insurer.***

(vii) If the Insurance Company intends to avoid liability, it is not sufficient for the insurer to show that the person driving at the time of accident was not duly licensed but it must further be established that there was a breach on the part of the insured. Reliance, in this connection, has been placed on Narcinva V. Kamath and Another vs. Alfredo Antonio Doe Martins and Others [(1985) 2 SCC 574], Skandia Insurance Company Ltd. vs. Kokilaben Chandevadan and Others [(1987) 2 SCC 654], Sohan Lal Passi vs. P. Sesh Reddy and Others [(1996) 5 SCC 21] and United India Insurance Company Ltd. vs. Lehru & Others [(2003) 3 SCC 338].

5. In this case, the Insurance Company has not offered any proof to show that how the driving licence issued to drive heavy passenger vehicle would not be an effective and valid driving licence to drive the heavy goods vehicle. Moreover, the extent of proof required as per the

dictum laid down in the cases of Sohan Lal Pasi's and Swaran Singh also is not discharged. Hence, there is no illegality or impropriety in the order passed by the tribunal. Hence, the revision petition has no merits and it is dismissed. No costs. Consequently, the connected CMP is closed.

6. It is the duty of the Court to point out that the revision petitioner being a Nationalized Insurance Company is covered and governed by National Litigation Policy.

7. Towards reducing pendency and delay, the Government of India framed a National Litigation Policy with a view to ensure the conduct of responsible litigation. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle. The Government is expected, not to be a compulsive litigant, but, a responsible litigant. Under the policy, the responsible litigant means,

(i) That litigation will not be resorted to for the sake of litigating.

(ii) That false pleas and technical points will not be taken and shall be discouraged.

(iii) Ensuring that the correct facts and all relevant documents will be placed before the court.

(iv) That nothing will be suppressed from the court and there will be no attempt to mislead any court or Tribunal.

8. If the litigation policy is considered in the light of the facts available, the question for consideration of the revision petition is that whether a litigation is worth fighting when the amount involved is only Rs.2,000/- and whether it is worth, keeping it pending for 16 years. The answer is that this litigation is a negative litigation. The Courts expect the revision petitioner to turn out as a responsible litigant.

04.02.2016

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S.VIMALA, J.,

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To

1. The Motor Accident Claims Tribunal,
   Principal Sub-Judge, Erode
2. The Section Officer, V.R.Section, Madras High Court, Chennai - 104

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