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

Date of Decision: 25th April, 2016

+ **MAC.APP. 122/2013**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Ms. Suman Bagga, Adv.

versus

DHARMENDER SINGH AND ORS Respondents

Through: Mr. Dharmesh Kumar & Mr. F. K. Jha, Advs. for R-2 & 3.

AND

+ **MAC.APP. 124/2013**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Ms. Suman Bagga, Adv.

versus

VANDANA SINGH AND ORS Respondents

Through: Mr. Dharmesh Kumar & Mr. F. K. Jha, Advs. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 16.12.2011, at about 08:00 AM a motor vehicular accident occurred on a public road near 16, Rajpur Road, Delhi involving two motor

vehicles, one being motorcycle bearing registration no.DL-5SY-5720 (motorcycle) and the other car bearing registration no.DL-8CF-4218 (the car). The motorcycle was driven by Dharmender Singh (first respondent in MAC appeal no.122/2013), with his wife Vandana Singh (first respondent in MAC appeal no.124/2013) travelling on the pillion. It has been admitted during inquiry before the tribunal that the car is registered and owned by the third respondent and concededly driven by the second respondent (in both appeals) at the relevant point of time. Both, the motorcycle rider and the pillion rider suffered injuries in the accident.

2. The local police had registered first information report (FIR) no.242/2011, initially invoking penal clauses contained in Sections 279/337/338 of the Indian Penal Code, 1860 (IPC), in police station Civil Lines, New Delhi. It is stated that during investigation, the driving license (Ex.R1W1/X1) presented by the second respondent in these appeals was found to be a fabricated document. In this view, the police added penal clauses contained in Sections 420/468/471 IPC. In due course, on the basis of evidence gathered during investigation into FIR, a detailed accident report (DAR) was submitted before the tribunal which treated the same as a claim petition on behalf of the two injured persons for grant of compensation.

3. On the basis of inquiry held, in which all the three respondents (including the appellant which is admittedly the insurer of the car against third party risk) appeared and submitted their respective responses. The tribunal passed its judgment on 25.09.2012, holding that the accident had occurred due to negligence on the part of the driver of the car (second respondent) and, thus, finding him and the registered owner (third

respondent) jointly and severally liable to compensate. The insurance company had taken the plea that it could not be fastened with the liability since the driver was not holding a valid driving license. This contention was, however, rejected and it was called upon to satisfy the award made by judgment dated 25.09.2012.

4. The insurance company, by appeals at hand, submits that the finding rejecting its contention about breach of terms and conditions of the policy is based on wrong reasoning. It argues that the driver and owner of the car having admitted that the document (Ex.R1W1X) which had been seized by the police was the only driving license relied upon, and the same having been found to be fake, it should have been exonerated.

5. The reasoning on the basis of which the plea of the insurance company has been rejected, as set out in (para 12 of) the judgment is as under:-

“Respondent no. 3 has stated that respondent no. 1 was not holding valid driving license, the same as per DAR was fake and therefore, they are not liable. Statement of R3W1 official of insurance has been recorded as per which they have relied on the report filed alongwith DAR whereby as per Ex. R3W1/2 the driving license of respondent no. 1 was not found to be issued from the said authority. Consequently, Section 420/468/471 IPG was added in the FIR. Respondent no. 3 has however, not examined any witness from the authority.

R1W1 stated that his driving license Ex. R1W1/X was seized by the police official in regard to the accident in question and copy of the same had been filed on record alongwith DAR report.

R2W1 stated that respondent no. 1 was his friend and had taken the vehicle one day prior to the accident in question. He admitted that driving license Ex. R1W1/X filed alongwith DAR was the only driving license of respondent no. 1 seized by the Police and also that

respondent no. 1 did not have any other driving license. Though the report in regard to driving license of respondent no. 1 as being fake has been produced alongwith DAR. However, respondent no. 3 has not proved that respondent no. 2 had willfully and deliberately violated the terms and conditions of the policy by handing over the offending vehicle to respondent no. 1, despite being aware of the status of the driving license. The onus to prove willful violation by respondent no. 2 was on respondent no. 3. Accordingly, respondent no. 3 cannot claim exoneration of its liability.

Accordingly, respondent no. 1 & 2 are jointly and severally liable. Respondent no. 3 to indemnify the claim.”

6. Neither the driver nor the owner (second and third respondents) have appeared at the hearing. On careful appraisal of the material on record, this court finds the submission of the insurance company to be just and proper. When the police investigating the FIR had found that the document (Ex.R1W1X) was not genuine, the burden stood shifted on to the driver and owner of the offending vehicle to show facts to the contrary. No evidence to such effect has been adduced. The owner is on record to admit that the said document was the only document relied upon as the driving license. He would not say that he had believed the document to be genuine before handing over his vehicle to the second respondent (the driver). Therefore, no case of due diligence has been made out. In the facts and circumstances, the insurance company was not required to come up with any further evidence than what was already before the tribunal. The burden to prove possession of valid driving license thus had shifted and has not been discharged by driver or owner.

7. In the result, the finding rendered by the tribunal rejecting the plea of insurance company about breach of terms and conditions of the insurance

policy must be upturned. It is held that there was a breach of terms and conditions of the insurance policy and, therefore, the insurance company is entitled to recovery rights *albeit* after satisfying the award in favour of the claimant. It has been submitted by the learned counsel for the insurance company/appellant that the award in favour of third party (the claimant) has already been satisfied. The insurance company is granted rights to recover the amount from the registered owner of the offending vehicle by appropriate proceedings before the tribunal.

8. The statutory deposit, if made, shall be refunded.
9. The appeals are disposed of in above terms.

APRIL 25, 2016
ssc

R.K. GAUBA
(JUDGE)

