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

Date of Decision: 11th May, 2016

+ **MAC.APP. 247/2013**

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

RAM JATAN & ORS. Respondents

Through: Mr. Sunil Kr. Ojha, Adv. with Mr.
Nishant Yadav, Authorized
Representative of R-2.

AND

+ **MAC.APP. 249/2013**

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

SHIVANI & ORS. Respondents

Through: Mr. Sunil Kr. Ojha, Adv. with Mr.
Nishant Yadav, Authorized
Representative of R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 04.02.2011, Ram Jatan Sahu and his wife Shivani suffered injuries in a motor vehicular accident involving negligent driving of car bearing registration no.DL-1RX-6861, plied as a taxi, and filed accident claim cases in the wake of a detailed accident report (DAR) submitted by the police which had registered first information report (FIR) no.33/2011 in local police station, the cases having been registered as nos.82/DAR/2011 and 83/DAR/2011 respectively. In both the petitions, the appellant/insurance company (the insurer) was impleaded as the third respondent, it having concededly issued an insurance policy in respect of the said vehicle against third party risk for the period in question in favour of M/s Carzonrent India Pvt. Ltd. (third respondent in these appeals), the registered owner of the said vehicle, in addition to Tajveer Singh (second respondent in these appeals) he being the driver of the said vehicle at the relevant point of time, besides Rajesh Kumar (fourth respondent in these appeals), he being lease-holder of the vehicle being plied as a taxi under a radio-taxi operation agreement.

2. The insurer, while resisting the claim cases, had pleaded breach of terms and conditions of the insurance policy on the ground that the driver was not holding a valid or effective driving license. The owner of the offending vehicle contested by submitting that it had been handed over on lease to the fourth respondent after confirmation that he had a valid and effective driving license and, therefore, due diligence had been exercised. Against this backdrop, the insurer also took the plea that since the vehicle had been given on lease, there was yet another violation of the terms of the

insurance policy for which reason the indemnity clause could not be invoked.

3. The tribunal, by separate judgments, rendered on 09.10.2012, upheld the cases of the claimants that the accident had occurred resulting in injuries being sustained by each of them on account of negligence on the part of the driver. It, however, rejected the contentions of the insurance company for exonerations on the above grounds and directed it to pay the compensation in each case.

4. By the appeals at hand, the insurer only reiterates its case of breach of terms and conditions of the insurance policy and prays for recovery rights.

5. The facts and circumstances of both the cases are common and reasons set out in each judgment for rejecting the contention of the insurance company are identical. While rejecting the plea with regard to the driving license, the tribunal referred to *National Insurance Company v. Swaran Singh*, (2004) 3 SCC 297 and *United India Insurance Company Ltd. v. Lehu & Ors.* (2003) 3 SCC 338 and held that since evidence clearly showed that the owner had given the vehicle to the fourth respondent who was holding a valid or effective driving license for commercial vehicle with requisite endorsement, there was no case of willful or deliberate breach of terms and conditions of the policy on this account.

6. This court finds the reasoning set out by the tribunal to be appropriate in the light of the law laid down by the Supreme Court in the cases of *Swaran Singh* (supra) and *Lehu* (supra).

7. The contention with regard to the breach on account of vehicle having been handed over on lease to the fourth respondent was considered by the tribunal after taking note of the evidence showing that the offending vehicle had been registered as a radio-taxi under radio-taxi scheme of the transport authority and the agreement with the fourth respondent had been entered into under the said scheme. After analysing various terms and conditions of the scheme and the radio-taxi agreement, the tribunal found that the control over the vehicle had continued in the hands of the second respondent who was thus liable to pay the compensation for the injuries suffered by the third party and, consequently, the third respondent (the insurer) was bound to indemnify.

8. In identical fact-situation, similar questions had been raised in another appeal *Meru Cab Company Ltd. vs. ICICI Lombard General Insurance Co. Ltd. & Anr.* (MAC appeal no.987/2014) decided by this court on 22.03.2016. In that case, the tribunal had granted recovery rights to the insurer against the owner of the taxi. This court considered relevant contention urged and held as under:-

“4. The learned counsel for the insurer, while resisting the appeal, inter alia, referred to the view taken by Supreme Court in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (1997) 7 SCC 481 and National Insurance Company Ltd v. Deepa Devi (2008) 1 SCC 414. She referred to the second clause of proviso to Section 147(1) MV Act to contend that the third party insurance policy which had been taken out by the appellant in respect of the offending vehicle was not required to cover liability arising out of contractual law. She referred in this context to the policy document, copy of which has been submitted (at pages 74 to 84 of the paper book), particularly the

clause under the heading “general exceptions” which is akin to what is provided in proviso to sub-section (1) of Section 147 MV Act.

5. *The learned senior counsel for the appellant, on the other hand, referred to Uttar Pradesh State Road Transport Corporation v. Kulsum (2011) 8 SCC 142 and Managing Director, K.S.R.T.C. v. New India Assurance Co. Ltd. (2016) 2 SCC 382, and argued that the third party risk undertaken by the insurance company could not be avoided on the plea accepted by the tribunal. It is pointed out that under the insurance policy, the owner (appellant) is entitled to engage any person as the driver subject, of course, to the condition that the person so engaged must hold a valid driving licence and be not disqualified from holding one at the time of the accident. It is pointed out that the view taken in Kailash Nath Kothari (supra) was distinguished by the Supreme Court in the case of Managing Director, K.S.R.T.C. (supra).*

6. *In the considered opinion of this Court, the approach of the tribunal was erroneous. There is no requirement either under the scheme or under the insurance policy that there should be an employer-employee relation between the driver and the owner of the vehicle as seems to be the premise on which the tribunal took the impugned view.*

7. *Pertinently, in Kulsum (supra), Supreme Court observed thus :*

“31. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate

insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.”

8. *In Managing Director, K.S.R.T.C. (supra), the following observations of the Supreme Court in rejecting similar contention raised by the insurer, albeit in different context, need to be quoted with advantage:*

“24. The provisions contained in the Act are clear. No vehicle can be driven without insurance as provided in Section 147 whereas Clause 14 of the lease agreement between KSRTC and the owner clearly stipulates that it shall be the liability of the owner to provide the comprehensive insurance covers for all kinds of accidental risks to the passengers, other persons/property. The provisions of the said clause of the agreement are not shown to be opposed to any provision in the Contract Act or any of the provisions contained under the 1988 Act. Hiring of public service vehicles is not prohibited under any of the provisions of the aforesaid laws. It could not be said to be inconsistent user by KSRTC. The agreement is not shown to be illegal in any manner whatsoever nor shown to be opposed to the public policy.

25. The policy of insurance is contractual obligation between the insured and the insurer. It has not been shown that while entering into the aforesaid agreement of lease for hiring the buses, any of the provisions contained in the insurance policy has been violated. It has not been shown that the owner could not have given bus on hire as per any provision of policy. It was the liability of the registered owner to provide the bus regularly, to employ a driver, to make the payment of salary to the driver and the driver should be duly licensed and not

disqualified as provided in the agreement though buses were to be plied on the routes as specified by KSRTC and hiring charges were required to be paid to the registered owner. In the absence of any stipulation prohibiting such an arrangement in the insurance policy, we find that in view of the agreement of lease the registered owner has owned the liability to pay. The insurer cannot also escape the liability.

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27. Now, we come to the question of exclusion of contractual liability under the second proviso to Section 147(1). When we read the provisions of Section 147 with Section 157 together, it leaves no room for any doubt that there is deemed transfer of policy in case of transfer of vehicle. Hence, liability of the insurer continues notwithstanding the contract of transfer of vehicle, such contractual liability cannot be said to be excluded by virtue of the second proviso to Section 147(1) of the 1988 Act. Hire-purchase agreement, an agreement for lease or an agreement for hypothecation are covered under Section 2(30) of the 1988 Act. A person in possession is considered to be an owner of the vehicle under such agreements. In case such contractual liability is excluded then anomalous results would occur and financier under hire-purchase agreement would be held liable and so on. In our view, an agreement for lease on hire cannot be said to be contract envisaged for exclusion under contractual liability in the second proviso to Section 147(1) of the 1988 Act. The High Court has erred in holding otherwise.”

9. To borrow the expression used in the case of National Insurance Company V. Swaran Singh (2004) 3 SCC 297, there is no “fundamental breach” of the terms and conditions of the policy shown in the case at hand. If there is any violation of the terms and conditions of the Radio Taxi Scheme, it is for the authority which

granted licence under the said scheme to the appellant to take appropriate action. The conclusion is that the insurance company cannot escape its liability under the indemnity clause undertaken under the insurance policy.”

9. The above view squarely applies to the case at hand.

10. In the result, the appeals are found to be unmerited and, thus, dismissed.

11. By identical order dated 15.03.2013 passed in both these appeals, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified whereupon 50% was allowed to be released to the claimants in each case, the balance to be kept in fixed deposit with UCO Bank, Delhi High Court branch, New Delhi, initially for a period of one year to be renewed from time to time. The balance lying in deposit now shall also be released to the claimants in terms of the impugned awards.

12. The statutory amount, if deposited, shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
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