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

Date of Decision: 18th January, 2016

+ MACA 473/2011

DINESH KUMAR Appellant

Through: Mr. Sarul Jain, Adv.

versus

JAI RAM & ORS Respondents

Through: Mr. Arbaz Hussain, Adv. for Ms.
Shantha Devi Raman, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgement dated 15.05.2009, the motor accident claims tribunal ("the tribunal") allowed the petition under Section 166 of Motor Vehicle Act, 1988 ("MV Act") of first respondent (Jai Ram) registered as suit no.54/09 granting compensation in the sum of Rs.4,47,515/- with interest on account of injuries suffered by him in an accident that occurred on 24.04.2000 involving motor vehicle bearing registration no.DL-4CD-6034. In the claim petition, the appellant herein was impleaded as the fourth respondent, who had purchased the offending vehicle from Suresh Kumar (arrayed as the second respondent), with the allegations that the vehicle was driven by the third respondent (Vicky @ Lucky) at the relevant point of time. The offending vehicle was concededly insured against the third party risk with National Insurance Company Ltd. (second respondent herein). The insurance company, however, took the position that the driver of the offending vehicle did

not hold a valid driving licence. This contention was upheld and the insurance company was held not liable to pay any compensation, the liability, therefore, having been apportionated jointly and severally on the original (or previous) owner, the driver and the transferee (the appellant).

2. It may be mentioned that the original (or previous) owner (Suresh Kumar) was also aggrieved with the impugned judgment and, thus, took out MAC appeal no.519/09 which was allowed by this court by order dated 26.02.2013 for the reason the vehicle had already been transferred with the insurance policy in favour of the appellant before the date of accident.

3. The contentions of the insurance company with regard to the breach of the terms of the insurance policy and the response thereto, on behalf of the appellant have been dealt with by the tribunal in the impugned judgment in the following manner:-

“In its WS respondent no.1 i.e. National Insurance Company took a plea that the driver of the offending vehicle was not holding an effective and valid driving license as on the date of accident. To prove this contention Insurance Company examined R1W1 Shri Anil Kumar Lal, Dy. Manager, National Insurance Co., Divisional Office No.24, Punjabi Bagh, New Delhi who deposed on oath that he has brought the policy issued in the name of Suresh Kumar on 21.02.2000 for the vehicle no.DL-4CD-6034 for the period of 21.02.2000 to 20.02.2001 which is Ex R1W1/1. This Policy was transferred on 11.04.2000 in the name of Dinesh Kumar and the endorsement was mentioned in the policy which is Ex.R1W1/2. The terms and conditions of the policy is Ex.R1W1/3 in 6 pages. Their advocate issues notice under order 12 rule 8 to driver Vicky which is Ex.R1W1/4 and its receipt is Ex.R1W1/5, the second notice issued Dinesh Kumar is Ex.R1W1/6 and its receipt is Ex.R1W1/7. The third notice issued to Suresh Kumar which is Ex.R1W1/8 and its receipt is Ex.R1W1/9. In this case police has not filed any charge sheet

nor D/L was taken by the police. The certified copy of DD entry which is RIWL/10. In the present case driver has no license as he has not filed in the court nor police has taken the same in his possession.

The owner/ insurer Dinesh Kumar has lodged the own damage claim. The original claim form is duly signed by the insured is Ex. RIWL/11. The insured mentioned in column 8 of the claim form the name of driver as Amit Sharma which is Point A. In the claim form on column A insured mentioned that only driver received minor injuries on point B. In the same claim form on column 7 regarding party injury the insured mentioned Nil on point C. The insured further in column 9 on sub-column not mentioned any details of reply of all the columns of column 9 on point D. The insured had mentioned regarding any injury or any FIR or any DD entry. The claim form containing 4 pages. The signature of insured on claim form at point E. The Insurance Company has issued letter dated 22.06.2000 to insured Dinesh Kumar regarding some queries which is Ex.RIWL/12. The insured Dinesh Kumar in his reply of the above letter written one letter to Branch Manager on dt. 14.07.2000 which is Ex.RIWL/13. The insured has taken the own damage claim of the vehicle by giving wrong and false information to the insurance company and taken the own damage claim of the Vehicle for Rs.24,250/- which is Ex RIWL/14 in cheque no. and signature on point F. The RC of the vehicle no.DL-4CD-6034 is Ex.RIWL/15. The insurance company is not liable for any claim if the insured has conveyed wrong and false information and mis-presented and concealed any fact. In the present case, the driver Vicky @ Lucky respondent No.3 have no D/L. It is the reason that the insured by giving wrong information and wrong name of the driver in the claim for and has taken the OD claim. Further the vehicle was also used taxi while it is a private vehicle and policy was also issued for the same which in violation of terms and conditions of the policy/MV Act, therefore. Insurance Company is not liable to indemnify any type of claim. In the present case it has taken in the evidence that the driver of the offending vehicle has not produced his driving license even at the time of accident to the police or he has not filed the copy of his driving license in the court as he has not come forward to appear and to file the WS on behalf of him just to denied the averments made against him in the petition by the petitioner. The R-2 and 4, who are the previous and present owner of the offending vehicle. have not tried to produce the R-3 or even to file the WS on behalf of him. The R-2, 3 and 4 have not come forward even after service of notice u/s 12 rule 8 of CPC upon them by the insurance company R-1. So in

consideration of the conduct of the R-2,3 and 4 and documents exhibited Ex.RIW/1 to 15 in the testimony of Shri Anil Kumar Lai who is a Dy. Manager of R-1 because his testimony has not been challenged by the R-2, 3 and 4. It seems that the driver of the offending vehicle was not having any effective and valid driving license at the time of accident. The R-4 has taken the O/D claim of the offending vehicle on the basis of false information furnished by him in the claim form no.4 to R-1 NIC. It is also revealed that the vehicle in question was not commercial vehicle but the same was being used as commercial purpose as at the time of accident the inmates of the said vehicle were brides and bridegroom including the present petitioner. So the vehicle is being used as commercial and was also being driven by unauthorized person at the time of accident. As per case New India Assurance Company Ltd. Vs Mandar Madhav Tambe and ors., reported in 16 ACJ 253, 1996(1) TAC 506 in which it has been held that:-

The Insurance Company would be liable only if the vehicle was being driven by a person holding a valid driving license or the permanent driving license other than learner license and if the driver was holding no license on the date of accident then the insurance company is not liable to indemnify the insured. In the case law Manoj Vs. Samundar Singh and ors., 2005 ACJ 520 the division Bench of this court has held that if the driver of the offending vehicle has no license on the date of the accident then the insurance company is not liable to indemnify the insured as the vehicle was being driven in contravention of the terms and conditions of the insurance policy.

So, the Insurance company R-1 has established that the vehicle is being used as commercial purpose and was being driven by a person who had no valid and effective driving license at the time of accident. Hence, R-1 is not liable to pay the amount of award to the petitioner. In these circumstances there was violation of policy condition. R-2, 3 and 4 are jointly and severally liable to pay the amount of award to the petitioner.”

4. The contention of the appellant essentially is that the default on the part of the driver to hand over the driving license to the investigating police officer, or omission on the part of the latter to take the necessary steps to secure the driving licence from him, cannot result in aforesaid

view taken against the owner of the vehicle. On being asked, learned counsel, however, fairly conceded that no evidence has been led on his part by the appellant to show that the driving was in possession of the valid driving license on the date of the accident. He also was unable to refute the observations of the tribunal in the impugned judgment, as quoted above, that when the insurance company called upon the appellant by way of notice under Order 12 Rule 8 CPC to share information with regard to the driving license, no response was submitted.

5. In the given facts and circumstances, it was the burden of the appellant, who was seeking indemnity through the insurance policy to prove by positive evidence that the driver was holding a valid driving licence. The said burden not having been discharged as the appellant failed to muster any evidence, the view taken by the tribunal cannot be faulted. The mere fact that own damage claim was allowed by the insurance company, as noted in the afore-extracted paragraph of the view taken by the tribunal, cannot mean that the owner had duly proved that the driver was holding a valid driving licence. The burden in this regard had to be discharged not before the insurance company but during inquiry before the tribunal.

6. For the foregoing reasons, the appeal is found devoid of substance and is dismissed.

R.K. GAUBA
(JUDGE)

JANUARY 18, 2016/ssc