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

Date of Decision: 24th May, 2016

+ MAC.APP. 447/2013
BAJAJ ALLIANZ GENERAL INSURANCE COMPANY
LTD Appellant
Through: Ms. Suman Bagga, Adv.

versus

RAMESH CHAND SHARMA & ORS. Respondents
Through: Mr. Arun Yadav, Adv. for R-1 to 3.
Mr. Anuj Soni, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Karan Sharma was riding on motorcycle bearing registration No. HR 26AH 1279 (the motorcycle) on 19.05.2010 and had reached at Ridge Road, near Simon Bolivar Marg, Red Light, Chanakyapuri when it was involved in a collision with motor vehicle described as petrol tanker bearing registration No. DL 1GB 6850 (the offending vehicle). As a result of injuries suffered Karan Sharma died in hospital on 26.05.2010. An accident claim case was filed by his dependant family members, first to third respondents (claimants,) seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). In the claim case, the appellant was impleaded as one of the respondents, it being admittedly the insurance company which had issued a third party risk insurance policy in respect of the offending vehicle. Additionally, Ram Kumar (fourth respondent) and

Har Mohinder Kaur Anand (fifth respondent) were also impleaded as parties on the averment that they were driver and owner respectively of the offending vehicle.

2. During inquiry before the tribunal, it was proved on the basis of admission in the pleadings and by evidence that the offending vehicle was driven at the relevant point of time by the fourth respondent and that it was owned by the fifth respondent. The tribunal also returned a finding that the accident had occurred resulting in death due to negligent driving of the offending vehicle by the fourth respondent, thus, holding him liable to compensate, he being the principal tort-feasor. The fifth respondent (owner of the offending vehicle) was held jointly and severally liable with the former on account of vicarious liability.

3. Before the tribunal, the appellant insurance company (insurer), had, *inter alia*, pleaded that its liability to indemnify was subject to proof being adduced that the driver of the offending vehicle was holding a valid or effective driving license in respect of the offending vehicle. The insurance company led evidence to prove that the driving license upon which the fourth and fifth respondents relied on was not valid or effective for the purposes of vehicle involved for the reason it was a petrol tanker meant for carrying hazardous substance and there was no endorsement for purposes of such vehicle in terms of Section 14 (2) of MV Act read with Rules 9 and 132 of the Central Motor Vehicles Rules, 1989.

4. The evidence led by the insurance company included the testimony of Vir Narayan Singh (R3W1), dealing assistant of State Transport Authority, Sudesh Bala (R3W2), a clerk of RTO Alwar, Rajasthan and Shreyas Thakur (R3W3), Executive (Legal) of the insurance company. While R3W1 proved

the national permit in respect of the offending vehicle, R3W2 proved the driving license (Ex.R3W2/1) of the fourth respondent (driver). R3W3, having proved the copy of the insurance policy (Ex.R3W3/1), also proved notice under Order 12 Rule 8 of Code of Civil Procedure, 1908 (CPC) as per copy (Ex.R3W3/2), its dispatch in postal transit (vide Ex.R3W3/3), and delivery vide acknowledgement card (Ex.R3W3/4) besides certified copy of the driving license (Ex.R3W3/5), verification report (Ex.R3W3/6) and another copy of the driving license (Ex.R-1), as had already been filed by the claimants.

5. Noticeably, no evidence was led, despite opportunity, by the fourth or fifth respondents. It is clear from the evidence adduced by the insurer that the driving license relied on by the fourth and fifth respondents (though valid for a heavy transport vehicle) does not bear any endorsement in the nature required by Section 14 of MV Act or Rules 9 and 132 of Central Motor Vehicle Rules 1989.

6. The tribunal, however, rejected the plea of the insurance company about breach of terms and conditions of the insurance policy on the basis of following reasoning:-

52. In the written statement respondent no. 3 has taken general objection that in case it is held that the insured vehicle was not having a valid and effective route permit, registration certificate, fitness and authorization of the driver issued from concerned authority, the respondent no. 3 shall have no liability. In the written statement respondent no. 3 has not pleaded that the offending vehicle was carrying hazardous material at the time of accident and the driver of vehicle i.e respondent no. 1 did not possess an appropriate licence bearing endorsement to drive a vehicle carrying hazardous material. Apart from statement of PW3 in the cross-examination to the

effect that the offending vehicle was a petrol tanker no other evidence has been adduced by respondent no. 3 to prove that offending vehicle was a vehicle designed to carry hazardous material and , at the time of accident the offending vehicle was carrying hazardous material”.

7. Similar questions had arisen in another matter MAC Appeal No. 798/2010, *New India Assurance Co. Ltd. vs. Ashpal Singh & Ors.* decided by this Court on 18.01.2016. The issue was discussed and adjudicated upon thus:-

“4. The material on record clearly shows that the offending vehicle was an oil tanker (10 wheeler) registered in the name of the first respondent. The learned counsel for the appellant refers to Section 14(2) of the MV Act which reads as under :

*“14. **Currency of licences to drive motor vehicles – (1)***

...

X X X

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years,

whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry.

5. *It is clear from bare reading of the proviso under Section 14(2) (9) that in the case of transport vehicles carrying goods which are dangerous or hazardous in nature, the driving license ordinarily issued is not sufficient in that, such driving license requires a further endorsement as to the compliance by the driver with the requirements of the other conditions, such licenses being effective only for a period of one year and subject to renewal for similar period from time to time thereafter.*

6. *In above context, reference has also been made to rules 9 and 132 of the Central Motor Vehicle Rules, 1989 which, to the extent relevant, read as under :*

9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.—

X X X

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the

driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

X X X

132. Responsibility of the transporter or owner of goods carriage.—

X X X

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

X X X

7. It emerges from the pleadings before the Tribunal, and the evidence adduced during inquiry into the claim petition before it, that the offending vehicle was one which would fall in the category of a transport vehicle meant to carry dangerous or hazardous substances. In these circumstances, the driving licence of the driver deputed to drive such vehicle could not be the one ordinarily issued for purposes of a heavy transport vehicle, as appears to be the case pleaded by the driver and owner of the offending vehicle in the matter at hand. Noticeably, the accident information report (page 46 of the paper book) shows that the driving license issued in favour of the driver (the second respondent) in this case was claimed to be one valid for the period 18.06.2004 to 17.06.2007. There is no material made available to show that the driver had secured the authorisation necessary in terms of Section 14(2) of MV Act, read with rule 9 of Central Motor Vehicle Rules, 1989. The rules as noted above, do not permit such validity in case the driver is to be on duty on a vehicle carrying dangerous or hazardous substances.

8. The insurance company had denied liability to pay compensation in the case at hand referring to the aforementioned deficiency in the driving licence of the second

respondent. The contention of the insurance company (the appellant) was rejected by the Tribunal through the following observations :

“24. R3 has not examined the investigator. No official of the Licensing Authority Mathura has been examined to prove the report ExR3W1/F. No notice u/o 12 Rule 8 CPC had been issued to R2. The petition had been filed on 5/8/2006. WS dtd 13/10/2006 on behalf of R3 was filed on 21/2/2007. The issues were framed on 3/4/2007. The matter was not settled by R3 because of the fact that R1 was not having valid DL. This fact was disclosed to the court by ld. Counsel for R3, on 16/5/2007. Thus, R3 was required to bring on record the registration certificate of the vehicle. It (R3) was also required to examine the investigator and official of the Licensing Authority. In the absence of evidence, the mechanical inspection report of the offending vehicle referred to by counsel for R3 is not being taken into account.

25. Admittedly the offending vehicle was being driven by R1. It was owned by R2 and was insured with R3. Therefore, R1, is the principal tort feaser. R2 and R3 are vicariously liable. All the respondents are held jointly and severally liable to pay the awarded amount. However, since the vehicle was insured with R3, therefore, it shall pay the awarded amount.”

9. It appears the Tribunal has fallen into error by calling for negative evidence. The insurance company had pleaded that it was not liable because the driver did not have a valid endorsement in terms of the requirements of Section 14 of MV Act read with rules 9 and 132 of Central Motor Vehicle Rules, 1989. It was the burden of the owner and driver respectively of the offending vehicle, in the facts and circumstances of the case, to prove by positive evidence that the driving license of the second respondent was one carrying the necessary authorisation.

10. On being asked, learned counsel for the first and second respondent (owner and driver respectively) fairly concedes that the driving license carried by the driver of the offending vehicle did not have the necessary authorisation in terms of proviso to Section 14(2) of the MV Act read with rule 9 (3) and rule 132 (5) of the Central Motor Vehicles Rules, 1989 quoted above.

11. In these circumstances, the driving license on which the said party respondents have been relying cannot be accepted as a valid license for purpose of the offending vehicle. Thus, there has been breach of provisions of insurance policy. The Insurance company (the appellant) has already paid the amount to the claimant in terms of impugned judgment-award. It is entitled to recover it from the registered owner (the first respondent) of the offending vehicle.

6. The reasoning set out by the tribunal in rejecting the contention of the insurance company to above effect cannot be accepted. It was wrong on the part of the tribunal to observe that no evidence had been led to prove that the offending vehicle was carrying hazardous material at the time of the accident. The statement of R3W3 to this effect, on the basis of his affidavit (Ex.R3W3/A) has gone unchallenged. There was no evidence led to the contrary. The documents and evidence on record confirm that the driving license held by the fourth respondent did not bear any endorsement in the nature compulsorily required by Section 14(2) (9) of MV Act. Though, during the cross-examination of R3W2, a photocopy of document mark 'A' purported to be a training certificate obtained by the driver was tendered to claim that the driver had actually undergone the requisite training and had applied for endorsement but the application had been misplaced by the RTO, the witness denied the said suggestions. No further effort was made by the fourth and fifth respondents to prove the necessary facts by any other evidence. Thus, mark 'A' has remained unsubstantiated and, is of no import.

7. In the above facts and circumstances, the insurance company has brought home its case about breach of terms and conditions of the insurance policy on which basis it is entitled to avoid the liability. However, given the fact that insurance policy was for the benefit of third party (claimant), it is desirable that the insurance company is first made to satisfy the award and thereafter have the liberty to recover the amount paid from the owner and driver of the offending vehicle.

8. By order dated 17.05.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified and out of such deposit 60% was allowed to be released to the claimants. The balance kept in fixed deposit receipts in UCO Bank, Delhi High Court Branch, New Delhi shall now be released to the claimants in terms of the impugned award. The insurance company is granted liberty to recover the amount thus paid from the fourth and fifth respondents in accordance with law.

9. Statutory deposit, if made, shall be refunded.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 24, 2016

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