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

Date of Decision: 8th February, 2016

+ **MAC.APP. 791/2011**

NARENDER SINGH & ANR. Appellants

Through: Ms. Sangeeta Chandra &
Mr. Deepak Khadaria, Advs.

versus

RELIANCE GENERAL INSURANCE CO. LTD.

& ANR. Respondents

Through: Mr. Sameer Nandwani, Adv. for R-
1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The second appellant herein is the registered owner of truck bearing registration No. HR 69A 0599 (the offending vehicle). Concededly, the offending vehicle was driven by the first appellant on 15.4.2008 when at about 9.55 p.m. in the area of pockets 2 and 5, Sector A-10, Narela T point, within the Union Territory of Delhi, it met with an accident involving two wheeler scooter described as scooty bearing registration No. DL 8SU 5643 (the Scooty) which was driven by Subhash Malik (the deceased) with his wife Sunil Kumari (the claimant) riding on the pillion. As a result of the collision, which was subject matter of investigation by the local police vide FIR No. 185/2010 of PS Narela, Subhash Malik suffered injuries to which he succumbed. The widow

Sunil Kumari brought a claim case under Sections 140 and 166 of Motor Vehicles Act, 1988 (MV Act) for compensation before the Motor Accident Claims Tribunal (the tribunal) which registered it as MACT Case No. 469/10/08. Both the appellants herein were impleaded as the first and second respondent in the said claim case and Reliance General Insurance Company Ltd. (the first respondent herein) was impleaded as party respondent No.3.

2. The appellants, upon notice, appeared before the tribunal and submitted a joint written statement admitting the accident but taking the position that the collision had occurred due to negligent driving of the scooter by the deceased. The insurance company, on its part, in its written statement admitted the insurance cover but disputed its liability on the ground of breach of policy conditions.

3. After inquiry, in the course of which, despite opportunity, the appellants did not lead any evidence, the tribunal passed the judgment on 17.1.2011, holding the claimant entitled to compensation in the sum of ₹ 6,47,987/-. Since ₹ 25,000/- had earlier been paid as interim compensation, the balance was directed to be paid with upto date interest @ 7.5 % per annum from the date of filing of the petition (17.5.2008) till realization.

4. In the course of considering the contentions of the insurance company about breach of terms and conditions of the policy, the tribunal considered the issue in the following manner:-

“Respondent no. 3 has examined one witness who proved the notices Ex. R3W1/1 and 2 under Order 12 Rule 8 CPC issued to the respondents no. 1 and 2 asking them- to produce original driving license, permit and insurance policy. The notices were sent by registered post as per postal receipts Ex. R3W1/3 and 4 but respondents no. 1 and 2 neither produced the documents as

required by the insurance company nor opted to reply the same. Even they did not appear in the witness box to show that they were having possession of these demanded documents. R3W-1 proved that the offending truck was not having valid permit to ply in Delhi territory as the permit Mark-A was valid only for Haryana State. The accident took place in Delhi which on the face of it shows that offending truck was being driven by violating the terms of permit as it was not authorized to drive outside of Haryana State. Insurance company in such situation due to breach of terms and conditions of policy is liable to be exonerated from indemnifying the owner of the vehicle and in this regard reliance can be placed upon decision of Supreme Court given in case National Insurance Co. Ltd. vs. Challa Bharathamma III (2004) ACC 292. Keeping in view the violation of the term and condition of policy regarding existence of valid permit, it is directed that insurance policy shall pay the entire compensation amount to the petitioner and later on can get it recovered from respondents no. 1 and 2 through execution proceedings.

In view of the above discussions, this issue is decided in favour of petitioner by holding that she is, entitled to get the following total compensation from the respondent no. 3 who is also given recovery rights to get this amount recovered later on from respondents no. 1 and 2 jointly or severally: ”

5. It is the above finding and the recovery rights granted in favour of the insurance company which are the bone of contention raised through the appeal at hand. The appeal is contested by the first respondent (the insurance company) reiterating that there was a breach of policy conditions and, thus, the recovery rights have been correctly granted in its favour by the tribunal.

6. The learned counsel for the appellant submitted that the copy of certificate of insurance (Ex.R3W1/5) was part of the material on record before the tribunal and that since the insurance policy was effective throughout India and since the terms and conditions were fully complied

with in that the driver was holding a valid driving license, and there was no other breach, the insurance company could not have been granted recovery rights and that it should have been asked to indemnify the insured for the damages suffered. In support, the learned counsel appearing for the appellants placed reliance on judgment of the Supreme Court in *National Insurance Co. Ltd. vs. Nicolletta Rohtagi* (2002) 7 SCC 456 and another judgment passed by a learned Single Judge of this Court in *National Insurance Co. Ltd. vs. Ram Rati & Ors.* (in MAC Appeal No. 11/2008 decided on 18.01.2008). She also referred to Section 86 of the MV Act to contend that there was no show cause notice issued for cancellation or suspension of the permit and that the permit taken out for the offending vehicle, even though issued for the State of Haryana, would nonetheless allow the vehicle to be taken in Delhi for the purposes of parking in the area of Narela, in terms of proviso to Section 88 of MV Act.

7. Per contra, the learned counsel for the insurance company submitted that the offending vehicle being a goods carriage vehicle, is covered by the description of “transport vehicle” and, thus, in terms of Section 66 of the Act, it could not have been put on road in a public place without a permit being taken for such public place. It is his submission that since the permit was not valid for the State of Delhi, the offending vehicle could not have been brought from Haryana to Delhi and since the accident occurred in the area of Narela within the jurisdiction of Union Territory of Delhi, there is clearly a breach of the terms and conditions of the policy conditions, reliance on which by the insurance company is legitimate in view of the provision contained in Section 149 (2) (a) (i) (c) of MV Act.

8. The judgments in *Nicolletta Rohtagi* (supra) and *Ram Rati* (supra) were based on facts which have no parity to the case at hand. It is not disputed by the appellants that the offending vehicle did not have a permit valid for Union Territory of Delhi. In these circumstance, the bringing in of the offending vehicle into Delhi amounted to breach not only of Section 66 of MV Act but also of the insurance policy and consequently Section 149 (2) of MV Act would apply. The contention that the vehicle had to be brought in to Delhi for purposes of parking is just in the air. No evidence was led to this effect during the inquiry nor any evidence has been offered in the appeal.

9. Reference to Section 86 of MV Act is misplaced in that there was no occasion for the transport authority to issue any show cause notice for cancellation/suspension of permit. The liability of the insurance company, or its title to statutory defences, is not dependent on issuance or non-issuance of any such show cause notice under Section 86 of MV Act. The proviso to Section 88 (a) of MV Act would not apply here as there is nothing to show that the journey of the truck into Delhi was for purposes of covering a route for re-entry into the State of Haryana.

10. For the foregoing reasons, the impugned judgment is found not to be suffering from any error or illegality. The finding recorded by the tribunal and the recovery rights given to the insurance company are, thus, upheld.

11. When the appeal was filed by order dated 01.09.2011, the appellants had been granted interim protection against execution on the condition that they would deposit 75 % of the awarded amount with upto date interest with the Registrar General within the specified period. No amount has been deposited. The application for modification was

dismissed by order dated 03.02.2012. Thus, the interim stay stood vacated.

12. The learned counsel for the insurance company is not aware if the recovery rights have been executed or not. Be that as it may, if no amount has been recovered, the insurance company is at liberty to move execution application for enforcing the said right.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016
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