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

Date of Decision: 22nd March, 2016

+ **MAC.APP. 987/2014**

MERU CAB COMPANY PVT LTD

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Alok Singh and Ms. Richa Rajesh,
Advs. with AR of Meru Cabs

versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ANR

..... Respondents

Through: Mr. Suman Bagga and Mr. Pankaj
Gupta, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 21.04.2014, the motor accident claims tribunal (tribunal) decided two accident claim cases, registered as MACT.No.183/2010 and 278/2010, they arising out of deaths of Preet Singh and Rajbir Singh in a motor vehicular accident that occurred on 04.05.2010 involving taxi bearing No.DL 1RY 4136 driven concededly by Devender Singh (the second respondent). The claimants in both the said cases brought under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) had alleged that the accident had occurred due to rash/negligent driving of the said vehicle which is owned by the appellant herein, it having been

impleaded as second respondent before the tribunal. The vehicle was admittedly insured against third party risk with ICICI Lombard General Insurance Co. Ltd. (insurer) which was also shown in the array of parties in both the claim cases, having been impleaded as first respondent in the appeal.

2. The tribunal held inquiry into both the claim cases and upheld the contention about negligence on the part of the driver and resultantly granted compensation to the claimants in each case. The insurer, while resisting the claims, had pressed for recovery rights against the owner (the appellant), *inter alia*, on the ground that there was no liability under the insurance contract inasmuch as the permit was not in the name of the driver. The tribunal examined the contentions of the insurance company, in the light of Radio Taxi Scheme, 2006 and proceeded to hold that there had been willful and conscious violation of the terms of the insurance policy as the owner had entered into a separate subscription agreement dated 22.04.2010 with the driver. Thus, while directing the insurance company to pay compensation in each of the said cases, it was granted rights to recover the said amounts against the appellant. It is these directions which are impugned in the appeal at hand.

3. The tribunal has dealt with the issue in the impugned judgment in the following manner :

“33 As far as recovery rights are concerned the insurance company has come out with the defence. Firstly, that as per the policy schedule the insurance company is not liable to the assured for any claim whatsoever out of any contractual liability and secondly, the insurance company is not liable as permit was not in the name of R1, Devender.

34 No alleged agreement between R1, Devender and R2,

M/s Meru Cab Company Pvt. Ltd. has come on record. Even the photocopy of the same has not been placed on record. Notice under order 12 rule 8 CPC has been sent on behalf of company by the counsel of the company and the same has been received vide acknowledgment Ex. R3W1/4 despite receipt of the notice the owner of the offending vehicle had not supplied copy of the agreement entered into between R2 & R1. The insurance company in their evidence has also proved vehicle handover letter which is Ex.R3W1/11 wherein it has been clearly mentioned that subscription agreement dated 22/4/2010 is sent between R1 & R2 and pursuant to this agreement no. 1477 the vehicle was handed over to him.

35 The insurance policy has been issued on 18/3/2010 which is EX. R3W1/7 in which premium of Rs. 25/- has been paid towards paid driver (IMT 28). and premium of Rs. 120/- has been paid towards P. A. Cover for paid driver, cleaner and conductor. Despite paying above said premium and conscious of this fact M/s Meru Cab Company Pvt. Ltd. has entered into a subscription agreement on 22/4/2010 with R1.

36 Apart from this Ex. R3W2 which is Radio Taxi Scheme 2006 inter-alia provides for the driver profile as under :-

- 1*
- 2*
- 3*
- 4*
- 5*
- 6*

7 The radio taxi licensee shall be responsible for quality of drivers, their police verification, employer control and supervision of drivers, employee behaviour etc. The employers shall also ensure that the drivers are totally safe, reliable and trustworthy.

8 If the radio taxi licensee uses or causes or allows a vehicle to be used in any manner not authorized by the permit or provisions mentioned herein, the licensee/ driver shall be jointly and severally responsible for any

offence or crime which has been committed by a person, including driver, using the said vehicle.

37 From the above it is amply clear that as per scheme the radio taxi licensee should have been the employer and the driver should be under their control and supervision. Moreover, the radio taxi licensee is also responsible for their behaviour etc. Furthermore, employers shall also insure that their drivers are totally safe, reliable and trustworthy, therefore, as per scheme their should have been an employer employee relationship between radio taxi and the driver. Any other relationship is not provided under the scheme. The natural corollary is that by entering into separate subscription agreement, the radio taxi has gone beyond the provisions of the scheme. Under the scheme as per clause XI which provides for power of licensing authority to suspend or cancel the licence which inter-alia provides the employee of licensee is guilty of misbehaviour with customer, Licensing Authority may suspend the licence for a specify period or canceled the licence. Now if the driver is their employee they can control the driver with respect to his behaviour etc. and if the driver becomes an independent person in a contract with radio taxi, the radio taxi may not have complete supervisory and other control over the driver. Meaning thereby that under scheme there should have been a employer employee relationship between the radio taxi and driver. The respondent no. 2 M/s Meru Cab Company Pvt. Ltd. has completely failed to show if the relationship between them and R1, driver was that of "employer employee" relationship.

38 Furthermore, in their evidence R2W1 Sh. Shatrughan Singh has been examined who has proved the above said radio taxi scheme 2006.

39 R2W2, Sh. Vishal was also examined who has proved the proposal form.

40 Both the witnesses are of no help to the case of respondent no.2 in any manner as the radio taxi scheme vis-a-

vis radio taxi and driver has already been discussed above. In such a scenario non mentioning of name in the proposal form also goes against the company. It was first the duty of respondent no. 2 to have mentioned the name of the driver, had there been any paid driver.

41 As regards second defence in accordance with radio taxi scheme 2006 the permit was to be given is the company having a fleet of about 500 cars and company is holding that permit as per the scheme, whereas individual permit is not given. In view of foregoing reasons and discussions since respondent no. 2 has entered into a separate subscription agreement dated 22/4/2010 with RI, therefore, they have willfully and consciously violated the terms of the policy. Thus, the insurance company is entitled to recovery rights against respondents no. 1&2 jointly or severally.”

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 above :

“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.
10. Thus, the appeal is allowed. The recovery rights granted against the appellant are vacated.
11. The statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
VLD