

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

+ **FAO No.74/2017**

% **25th October, 2017**

THE NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. S.P.Jain with
Ms. Amandeep Kaur, Advs.

versus

NIRMALA DEVI & ANR. Respondents
Through: Mr. Sanobar Ali Qureshi &
Mr. Vinay Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

CM No.5612/2017(exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

FAO No. 74/2017 & CM No.5613/2017(stay)

1. This First Appeal under Section 30 of the Employee's Compensation Act, 1923 is filed by the insurance company impugning the judgment of the Employee's Compensation Commissioner dated 25.11.2016 by which the Employee's Compensation Commissioner

has allowed the claim petition filed by the claimant/respondent no.1 herein and has awarded compensation under the Employee's Compensation Act on account of death of the son of the claimant, Sh. Arun Kumar Sharma.

2. The facts of the case are that the deceased, Sh. Arun Kumar Sharma is pleaded to have been working as a driver of a truck bearing No.RJ-14-GA-8783 which was owned by the employer/owner Smt. Roopa Sharma, respondent no. 2 herein, and who was the respondent no.1 before the Employee's Compensation Commissioner. It was pleaded in the claim petition that on 16.1.2009 at about 10:45 AM when the subject truck was on its way from Bangalore to Delhi and it reached Raptadu village in Andhra Pradesh it was hit by a bus of Andhra Pradesh Road Transport Corporation (in short 'APRTC') bearing No.AP-28Z-0604 and because of the accident Sh. Arun Kumar Sharma died. It was pleaded that the bus operated by APRTC was being driven in rash and negligent manner but their employees being government employees managed to get an FIR registered that it was the deceased Sh. Arun Kumar Sharma who was rashly driving the vehicle. The vehicle in question was insured with the

appellant/insurance company, respondent no.2 before the before the Employee's Compensation Commissioner, under an insurance policy which was valid from 29.9.2008 to 28.9.2009 and consequently, the subject claim petition was filed. I may note that earlier a claim petition was filed under the Motor Vehicles Act, 1988 and which was allowed to be withdrawn wherein the claimant/respondent no.1 sought and was granted liberty to file a petition under the Employee's Compensation Act.

3. The owner/employer/respondent no.2 herein did not appear before the Employee's Compensation Commissioner and was proceeded *ex-parte*. The claim petition was contested by the appellant/insurance company, respondent no.2 before the Employee's Compensation Commissioner. Two defences were pleaded on behalf of the appellant/insurance company for dismissal of the claim petition. The first issue which was urged was that the driving license of Sh. Arun Kumar Sharma was fake and secondly it was urged that there was violation of the permit condition because the vehicle in question had no permission for being driven in Andhra Pradesh where the accident occurred.

4. Two issues were framed on the aspects as stated above, and of which onus was on the appellant herein, evidence was led on behalf of the appellant/insurance company as onus of both the issues with respect to the driving license being fake and the vehicle being driven in an area for which there was no permit, were on the appellant/insurance company. Since the present appeal will have to be decided almost entirely on the basis of the affidavit by way of evidence filed on behalf of the appellant/insurance company, and since the affidavit by way of evidence is a short affidavit of four paras in two pages, the same is reproduced as under:-

“Evidence by way of affidavit on behalf of respondent No.2 National Insurance Co.Ltd.

I, Dharmender Arya, Administrative Officer of National Insurance Co. Ltd. having its office at, 2E/9, Jhandewalan Extension, New Delhi – 55, do hereby solemnly affirm and declare as under:

1. I say that I am the official of the National Insurance Co. Ltd. and handling the present case and thus aware of the facts of the case. Thus I am competent to swear this affidavit.

2. I say that the liability of the insurance company arises out of the insurance contract in the present case which is already on record. The said policy has been issued subject to the terms and conditions of the policy as specified in the policy scheduled is as under:

Persons or Class of Persons entitled to drive:

Any person including insured, Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such license.....

It is submitted that upon receipt of the MACT Claim the driving license provided by the driver of the vehicle was verified through investigator. As per report of the investigator obtained from the Licensing Authority, Mathura license provided by the Claimant was issued in the name of Sh.Subhash Chand and not in the name of Late Arun Kumar Sharma i.e. the deceased driver. Thus it was proved from the report of investigator that the

deceased was driving the vehicle with forged Driving License. As the insured allowed the vehicle to be driven by a person not holding a valid and effective driving licence thus no liability can be put upon the insurance company. The Insurance policy is exhibited herewith and marked herewith as **Exhibit R2W1/1** and the report of investigator dated 22.11.2010 is exhibited herewith and marked herewith as **Exhibit R2W1/2**.

3. I say that from the above facts and circumstances explained it is very much clear that the vehicle was being driven and was allowed to be driven without a valid and effective driving license. Thus there is violation of terms and conditions of the policy. It is, therefore, the insurance company is not liable to indemnify the compensation if any passed against the Respondent No.1.

4. I say that this is my true and correct statement and nothing material have been concealed therefrom.”

5. A reading of the aforesaid affidavit by way of evidence shows that the appellant/insurance company has proved the report of the investigator, Ex.R2W1/2 that the driving license is fake, however, the law is now well settled that when the issue is that whether the terms and conditions of a policy have been violated on the ground that driving license of the driver is fake, then all that an owner of the vehicle is to do at the time of employment of the driver is to see whether the driver has a valid license. There is no onus or duty cast upon the owner of the vehicle to conduct a detailed enquiry including by going to the Road Transport Authority to confirm the validity of the license. It has now been consistently held by the Supreme Court that there is a requirement therefore in law for evidence to be led that the owner at the time of employment of the driver did not at all check

the license and such a deposition has to be made by the insurance company, however this has not been so deposed by the witness of the appellant/insurance company in the affidavit by way of evidence which was filed, and therefore it has to be held that the employer had examined the driving license of the employee at the time of employment of the employee as a driver of the vehicle. I have reproduced the affidavit by way of evidence filed on behalf of the appellant/insurance company before the Employee's Compensation Commissioner and it is seen that no averment by the appellant/insurance company that the owner of the subject vehicle when he employed the deceased Sh. Arun Kumar Sharma had not checked the driving license of Sh. Arun Kumar Sharma or that the employer never saw any original valid license of Sh. Arun Kumar Sharma at the time of his employment. Once the appellant/insurance company has not deposed so as per its affidavit by way of evidence, in such a case it has to be held that the fact that the driving license may in fact turn out to be fake will not exonerate the appellant/insurance company. The first issue is therefore decided against the appellant/insurance company.

6.(i) I would like to, at this stage, refer to the arguments on behalf of the appellant/insurance company with respect to the first issue that the judgment of the Supreme Court in the case of ***National Insurance Company vs. Mastan & Anr., I (2006) ACC 1 (SC)*** concludes the issue in favour of the appellant/insurance company that once there are two separate Acts being the Employee's Compensation Act and the Motor Vehicles Act then the provisions of the Motor Vehicles Act including Section 149 of the Motor Vehicles Act cannot be used for deciding compensation cases under the Employee's Compensation Act.

(ii) In my opinion this argument urged on behalf of the appellant/insurance company has no application to the facts of the present case because all that is held in the judgment of ***Mastan's*** case (*supra*) is that a case under the Employee's Compensation Act will have to be decided as per the provisions of the Employee's Compensation Act and the cases under the Motor Vehicles Act will have to be decided as per the provisions of the Motor Vehicles Act, however, this is not the issue in the present case as the issue is that the law with respect to a valid driving license being held by the driver is

that all that owner has to do at the time of employment of the employee as a driver is to examine the driving license and that the employee/driver has a driving license. The duty of the employer being the owner of the vehicle ends there with no further enquiry required to be conducted by the owner of the vehicle/employer. It is this principle which is being invoked in this case for holding that the plea of fake license urged on behalf of the appellant/insurance company is to be rejected and this Court is not applying any provision of the Motor Vehicles Act for deciding the present case under the Employee's Compensation Act. Argument urged on behalf of the appellant/insurance company relying on *Mastan's* case (*supra*) therefore is clearly misconceived and is rejected.

7. The second argument which is urged on behalf of the appellant/insurance company is that admittedly the vehicle in question had a valid permit only for the States of Rajasthan, Delhi, Haryana, M.P., Maharashtra, Karnataka and Tamil Nadu but the vehicle in question when it met with an accident was in Andhra Pradesh, and hence clearly the terms and conditions of the insurance policy are violated as the vehicle was being driven against the terms of its

permit. In my opinion even this argument urged on behalf of the appellant/insurance company has no substance, though the Employee's Compensation Commissioner may not have been justified in referring to the provisions of Section 149 of the Motor Vehicles Act, inasmuch as, the vehicle has been proved at the relevant time of the accident as having been driven from Karnataka to Delhi wherein a part of the State of Andhra Pradesh would have to be crossed. It is seen that the States of Karnataka, Maharashtra and Tamil Nadu are contiguous and adjacent to each other and therefore for driving from these States to Delhi it is possible that for a particular stretch the highway of a State in which the permit is not valid would have to be crossed, however, since it is not proved by the appellant/insurance company that the vehicle when it met with an accident in Andhra Pradesh was not being driven for the trip from Karnataka to Delhi and that the vehicle was involved in an independent commercial journey in Andhra Pradesh where the accident happened, hence the principle of contiguity has been rightly relied upon by the Employee's Compensation Commissioner and which principle will necessarily apply. Surely, I do not think the appellant/insurance company can

argue that vehicles should have rotors and wings for flying so that they would cross a stretch of a State where it has no permit and which is required to be crossed necessarily for its onward journey to a destination. It is for this reason that on account of doctrine of necessity that the principle of contiguity will apply and unless and until the appellant/insurance company pleads and proves that there was no need to cross the stretch in a State not having permit otherwise the principle of contiguity on the doctrine of necessity which would have to be applied. In terms of the affidavit by way of evidence of the appellant/insurance company, and which has been reproduced in its entirety above, it has to be held that it has not been proved (or even pleaded) by the appellant/insurance company that the accident when it happened in Andhra Pradesh was on account of the vehicle being involved in an independent work in Andhra Pradesh and that it is not that the vehicle was only crossing a stretch which was in contiguity for the purpose of movement of the vehicle from Karnataka to Delhi. The second argument is also therefore without any substance and is rejected.

8. An appeal under Section 30 of the Employee's Compensation Act will only lie where substantial question of law arises. No substantial question of law arises. Dismissed.

OCTOBER 25, 2017
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VALMIKI J. MEHTA, J

