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

% *Judgment delivered on: 16.05.2017*

+ MAC.APP. 1081/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1088/2016 & CM No. 47468/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1089/2016 & CM No. 47471/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1091/2016 & CM No. 47566/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1092/2016 & CM No. 47573/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1093/2016 & CM No. 47579/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents
Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 1094/2016 & CM No. 47591/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE COMPANY
LIMITED & ORS Respondents

Through: Ms. Neerja Sachdeva, Adv. for R-1.

+ MAC.APP. 313/2016

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

RAJENDER AWASTHI & ORS (UNITED INDIA
INSURANCE CO LTD) Respondent
Through: Mr. Pankaj Seth, Adv. for R-1.

+ MAC.APP. 1022/2016

DELHI TANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

UNITED INDIA INSURANCE CO LTD & ORS Respondents
Through: Mr. Vijay Singh, Adv. for R-1.

+ MAC.APP. 194/2017

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Sarfaraz Khan, Adv.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through: Mr. Pankaj Seth, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These Appeals impugn the right of recovery granted to the insurer against the appellant. The third party liability has been met by the insurer

but they seek to recover the compensation amount from the owner of the vehicle for breach of policy conditions. The issue involved in the present cases is whether the liability to pay compensation can be fixed on the appellant, whose bus was being driven by a driver who did not possess a valid Driving License (DL).

2. The learned counsel for the appellant contends that it is not for the employer of the vehicle to verify the genuineness of the driving license. He relies upon the judgment of ***United India Insurance Company Ltd. vs Lehu & Ors. JT 2003 (2) SC 595*** which, inter alia, held:

“... 18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision, it must be shown that there is a “breach”. As held in Skandia and Sohan Lal Passi cases the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there, there is an accident. The thief is caught and it is ascertained that he had no license. Can the Insurance Company disown liability? The answer has to be an emphatic “No”. To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses, there is an element of risk. All persons carrying on business must take risks associated with that business.

Thus, it is equitable that the business, which is run for making profits, also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz that in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.”

....

“20. When an owner is hiring a driver, he will therefore have to check whether the driver has a driving license. If the driver produces, a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a license. And is driving competently, there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license was fake and still permitted that person to drive. More importantly, even in such a case, the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law, which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view....”

3. He also relies on the judgment in ***Pepsu Road Transport Corporation vs. National Insurance Company (2013) 10 SCC 217*** which too dealt with genuineness of the driving license. The Supreme Court had noted that even after perusing the evidence tendered by the Licensing Authority, it could not be conclusively ascertained whether the driving license was genuine or not; the Register maintained for issuing the driving licenses showed certain entries of 1985; the license concerned bore a number that was not included in the Register. The evidence also stated that it was possible that the other license Registers maintained in the year 1985, which were not readily available, may have contained the details of the license concerned. In other words, the element of doubt weighed in favour of the validity of the license.

4. The appellant contends that the insurer has failed to prove that the driving license was fake; furthermore the insurer had not taken any such defense in the common written statement. The learned counsel also relies upon the decision of this Court dated 12.03.2012 in ***MAC. App No. 16/2009, Delhi Transport Corporation vs. Shobha Rani & Ors.***, wherein DTC's appeal had been allowed on the ground that during cross examination the insurer had not put any suggestion to the driver that the license was fake and more importantly, that the driver or owner was aware that his license was fake; since neither the insurer nor the investigating police officer doubted the veracity of the license at least from merely looking at it, the insurer had failed to discharge the onus of proving willful breach of a condition in the insurance policy.

5. However, the aforesaid case is distinguishable on facts because in the present case, the Investigating Officer had said in his report that the driving

licence of the driver of the offending vehicle was fake. This position was not controverted by the appellant through evidence.

6. The appellant also relied upon a judgment of this Court in ***M/s. United India Insurance Co. Ltd. vs Babita Bai & Ors. in MAC. App. 301/2012, decided on 29.10.2014*** which held that the DTC was not expected to verify the genuineness of the driving license from the issuing authority at the time of employment of driver; it was sufficient if at the time of hiring the driver, the DTC checked the driving license; DTC cannot be held liable if later the driving license was found to be fake or invalid. This argument was, however, rejected by the Tribunal on the ground that DTC, being a statutory body, had a bigger onus on it as an owner to verify the validity of the driving license before employing the selected persons as drivers.

7. Refuting the aforesaid contention the learned counsel for the insurer submits that when the Detailed Action Report (DAR) filed by the investigating police officer concluded that the driving licence was fake; nothing further was required to be done by the insurer, it was for the employer/owner of the vehicle to prove that the licence was otherwise valid. The insurer argues that the motor insurance policy was issued in good faith under the bona fide presumption that the driver of the insured motor vehicle would be a person who would be duly licensed to drive. It is argued that this assumption is in consonance with the principle laid down in ***National Insurance Co.Ltd. vs Swaran Singh & Ors. AIR 2004 SC 1531***, wherein it was held that:

“110. (iii)... Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defenses available to the insurer against either the insured or the third parties. To avoid its

liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time...”

8. The insurer led evidence through its officers to state that there was breach of the insurance policy i.e., the driver did not possess a valid driving license, hence it would be entitled to recovery rights.

9. In ***Pepsu*** (*supra*), the Supreme Court observed:

“10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defense that the driver of the vehicle involved in the accident was not duly licensed. Once such a defense is taken, the onus is on the insurer. But even after it is proved, that the license possessed by the driver is a fake one, whether there is liability on the insurer is a moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving license. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner has taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving license with the Licensing Authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter, the insurance company requires the owner of the vehicle to have the license duly verified from the Licensing Authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the license issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the

matter regarding the genuineness of the license from the Licensing Authority. That is what is explained in Swaran Singh Case (Supra). If despite such information with the owner that the license possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.”

10. The learned counsel for the appellant contends that the engagement/employment of the driver was after: (i) production of the driving license by him, (ii) his passing the driving test, and (iii) after successfully completing the training provided to the prospective drivers. However, Mr. Pankaj Seth, the learned counsel for the insurer stated that this contention is not borne out from the appellant's written statement in which it has defended each of the drivers, but neither the appellant nor the drivers led any evidence to prove that they had a valid driving license. He contends that it is evident that the employer/owner/DTC of the vehicle has clearly failed in its duty to exercise reasonable care apropos use of the public transport bus for ferrying ordinary unsuspecting passengers who board it with the bonafide belief that its driver is duly licensed and has undergone requisite training and has the competence to drive a public bus on the roads of Delhi. The Tribunal has further observed that it is expected from a public employer such as the appellant DTC, being a statutory undertaking, that it would exercise due caution and care apropos verification of documents submitted by a person who is offered employment. It could have verified the Driving License even after giving the employment to drivers who may have passed the driving test.

11. What emerges from the preceding discussion is that, before employing a person as a driver the owner of an insured motor vehicle is required to satisfy himself that the person is qualified and competent to drive the vehicle and possesses a valid driving license. The owner may, as a matter of caution and prudence, seek to discreetly verify the genuineness of the driving license but that is not a mandatory requirement for a private employer. **Swaran Singh** (*supra*) held that the issue whether the insured has taken reasonable care to ascertain the validity of the driving licence produced by the driver and whether it fulfills the requirement of law, will have to be determined according to the facts in each case. In **Pepsu** (*supra*) the Court held that where the owner is satisfied himself that the driver has a license and was able to drive competently, it would not be a breach of the policy conditions to as to accord a ground to the insurer to repudiate third party liability.

12. The Tribunal had relied upon the observations in **Pepsu** (*supra*) that the question of liability of an owner would have to be determined in the facts of the each case. It also relied upon the judgment in **National Insurance Co .Ltd. vs Kusum Rai & Ors. (2006) 4 SCC 250** to say that the owner of the vehicle cannot contend that he had no liability to verify the facts as to whether the driver of the vehicle possessed a valid DL or not.

13. An insurance contract is based on uberrimae fides i.e. utmost good faith. When an insurer extends an insurance cover, it is done in the belief that the insured would take all necessary precautions and act as a reasonable person. The appellant is a statutory authority. It is statutorily mandated to provide public transport facility in the National Capital Territory of Delhi. It is expected from a public employer to check the antecedents of its

prospective employees and in particular the fact that the candidate possessed a valid driving license and that only after passing the special training, the selected candidates would be offered employment. In employment of drivers by a Government undertaking, the basic qualification is the possession of the driving license. The exercise of checking the validity of the driving license could be carried out even after offering provisional employment to the successful candidates. The position of a public transport undertaking, or a large public transporter, who engage a number of drivers – in hundreds and thousands, to drive their fleet of vehicles, is different from a private individual who engages one or two drivers for his/ her personal service. The latter would not possess the necessary administrative or financial wherewithal to verify the driving license. The individual may perhaps be also constrained by exigencies to employ a driver immediately without awaiting a driving licence verification report. In *Lehru (supra)*, the Court's concern that the objective of the legislation being that innocent third parties should be compensated, hence, it held that even in instances where the driving licence was fake, the insurer would remain liable to the innocent third party so that stipulations in sections 146, 147 and 149 of the Act are fulfilled and the award of compensation does not remain a hollow promise. In the present case, the third party liability has been met by the insurer, hence, the objective of the legislation apropos the innocent third party stands fulfilled. However, the Court went on to hold that after paying compensation to the third party, the insurer 'may be able to recover from the insured'.

14. In this regard, what needs to be examined is whether the appellant failed to exercise reasonable care as was expected from it. Regarding the

apportionment of liability, the impugned award records: “.... *The Respondents No. 1 & 2 have not led any evidence to prove that the Respondent No. 2 while employing Respondents No. 1 has taken/ done necessary test/ verification w.r.t. the capability of the Respondent No. 1 to driver (sic) the vehicle as well as the genuineness of his DL and as such the Respondent No. 2 cannot be absolved of its liability....*”. Clearly the appellant/ DTC did not lead any evidence to prove that before employing the drivers, it had taken the necessary driving test with respect to the capability and competence of the drivers or about the genuineness of their driving licence, therefore, the DTC cannot absolve itself of its liability. If the appellant had actually conducted the necessary test of the driving competence of the prospective candidates, and the necessary training having undergone by them to drive the public buses, it should have led evidence in this regard. The appellant insisted that the drivers had undergone the necessary special training before they were employed. In the absence of any evidence, it is clear that the appellant DTC failed to exercise reasonable care before employing the drivers. Responsible governance and prudence also require that special training be imparted to drivers, who ferry commuters throughout the National Capital Territory of Delhi, especially in view of the public transport needs of an ever burgeoning population and the incessant increase in the number of vehicles on the city roads. The numerous instances of rash and negligent driving involving DTC buses resulting in severe injuries and deaths in Delhi in the period concerned cannot be lost sight of. Even today, the strain of this malaise subsists. A public transport undertaking is not expected to unleash untrained, incompetent and unlicensed drivers upon the unsuspecting innocent public.

Therefore, this case fits into the exception as envisaged in **Swaran Singh** (*supra*) as referred to in **Pepsu** (*supra*) and **Kusum Rai & Ors** (*supra*).

15. In view of the above, there is no reason to interfere with the impugned order. The appeals are without merit and are accordingly dismissed.

NAJMI WAZIRI, J

MAY 16, 2017/kk

