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

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Decided on: 22.10.2013

+ MAC.APP. 29/2016

RELIANCE GENERAL INSURANCE CO LTD Appellant

versus

RAM DEVI & ORS

..... Respondents

+ MAC.APP. 28/2016

RELIANCE GENERAL INSURANCE CO LTD Appellant

versus

RAVINDER KUMAR & ORS.

..... Respondents

Through: Mr. Arun Yadav, Advocate for
appellant.

Mr. Dinesh Malik, Advocate for R-1.

Mr. Ankit Choudhary, Advocate for
R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On the previous date the following order was passed:

“The learned counsel for the appellant submits that the requisite amount has been deposited. The learned counsel for the respondents seeks time to obtain instructions and file such documents as he may seek to rely upon in

support of his request for release of the remaining amount of the awarded compensation.”

2. Today, the learned counsel for the appellant states that he has no objection to the release of the monies to the claimants.
3. Let the awarded amount, which is stated to have been deposited before the learned Tribunal, alongwith interest accrued thereon, be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.
4. The learned counsel for the parties submit that a connected matter being MAC.APP. 28/2016, which is listed in the category of ‘*Regular Matters*’, may be heard with this appeal.
5. At joint request, the appeals are taken up for disposal.
6. These appeals impugn the award of compensation dated 31.10.2015 passed by the learned MACT in claim petitions MACT No. 656/09 and 657/2009, on account of non-granting of right of recovery against the owner and driver of the offending vehicle. The same is sought on the ground that the driving licence of respondent no. 2 was found to be fake. The non-grant of the said relief has been recorded in the impugned order as under:

“ In United India Insurance Co. ltd. vs. Lehu & Ors. (2003) 3 SCC 338, it is held as under:

When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence 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 RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence 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 licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence 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 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view.

Premkumari & Ors vs Prahlad Dev & Ors AIR 2008 SC 1073, it was observed as under:

"It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the Insurance Company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive."

In United India Insurance Company Limited Vs Raj Baliadur alias Raju Bahadur 2013 (1) T.A.C. 429 (HP), also it is observed as under:

"the mere fact of fake licence is not enough to absolve the liability of the appellant-insurance company. For that, the insurance company was required to prove that the owner was guilty of the breach of the conditions of the insurance policy and lead the evidence that the owner of the vehicle/insured had reasons to know that the licence was fake and forged."

In the present case the owner i.e R2W1 in his affidavit has nowhere stated that had taken any driving test of the driver at the time of his employment. In his cross, he has also admitted that he had not checked the DL of respondent no. 1 at the time of his employment and thus, the above judgment relied upon by the counsel for respondent no. 2 does not help the case of respondent no. 2 in any manner. However it is also a settled law that onus was upon the insurance company to prove that the DL of the respondent no. 1 was not genuine and was fake and despite several opportunities granted to the insurance company and also despite giving B/w's of DTO Amritsar, Punjab, counsel for insurance company could not secure the presence of the witness from the office of DTO, Amritsar, Punjab. Even the report on the B/w's received dasti by the insurance company were not furnished to the court and hence, the insurance company has failed to discharge the onus upon them and have failed to prove that the DL of respondent no. 1 was not genuine and was fake. Verification was also called through SHO Khajuri Khas regarding the license of respondent no. 1 and HC Virender Kumar had filed a report according to which DL of respondent no. 1 was not genuine. However this report was also required to be proved during evidence by the witness from the office of DTO Amritsar. Also

respondents no. 1 & 2 should have had an opportunity to cross examine the witness from the office of DTO Amritsar Punjab before the present Tribunal could have relied upon the report furnished by HC Virender Kumar. As the witness from the office of DTO has not entered in the witness box and has not proved that the DL of respondent no. 1 is not genuine and no opportunity has been granted to respondents no. 1 & 2 to cross examine the witness, this report by HC Virender Kumar cannot be relied upon and hence, insurance company is not entitled to any recovery rights.”

7. The impugned order has relied upon the judgment of the Supreme Court in ***United India Insurance Co. Ltd. vs Lehu & Ors. (2003) 3 SCC 338***, as well on subsequent judgments, to state the settled law that the owner of the vehicle would first peruse the driving licence which, if it appeared to be genuine, should then have tested the skills of the driver.

8. Respondent no. 3-the owner of the vehicle has admitted in cross-examination on 04.09.2013 as under:

“Respondent no.1 Manirul is working with me as a driver 4-5 years ago before the accident. At the time of his employment I have not checked the D/L of R1.....”

9. The respondent nos. 1 and 2 have submitted as under:

“... ”

That the respondent no. 1-3 being the driver and owner of the vehicle but their liability are denied as no accident has taken place. Therefore Respondent no. 1-3 are not jointly and severally and vicariously liable to pay compensation to the Petitioner and the respondent no. 1 was driving the said offending vehicle under the supervision, management and

control of the respondent no 2-3.....”

10. The claim petition was resisted by the owner of the offending vehicle on the ground that his vehicle bearing registration no. DL-1LG-3849 was not involved in the accident. However, the involvement has been duly established and an FIR was registered and criminal proceedings have ensued. Therefore, the identity of the offending vehicle is not in doubt. The award was passed in 2015. There is not even a whisper of the owner having examined licence of the driver and/or having tested the skills of the driver before employing the latter's services. On the contrary, the owner admits that he had not seen the driving licence and has further admitted in his reply that the said driver was functioning under his control.

11. In the circumstances, there is a clear breach of policy condition because the vehicle was being driven by a person who did not possess a driving licence. Accordingly, the insurer would have and is granted the right of recovery against the vehicle owner-Bhupesh Bansal, apropos the amount of compensation paid by the insurer to the claimants.

12. The appeals are allowed and disposed-off in terms of the above.

13. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

OCTOBER 22, 2019/AB