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

% *Decided on: 24.07.2019*

+ **MAC.APP. 101/2018, CM APPL. 3173/2018, CM APPL. 3175/2018
& CM APPL. 3176/2018**

SANTOSH KUMAR & ANR

..... Appellants

Through: Mr. Sameer Nandwani, Advocate.

versus

**RAJ KUMAR KARMAKAR & ANR(NATIONAL INSURANCE
CO. LTD.)**

..... Respondents

Through: Ms. Archana Gaur, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The order of 29.01.2018, directing the appellants to deposit the awarded amount, has been complied with partly i.e. only Rs. 2 lacs has been deposited on 04.08.2018. The stay of the execution of the Award was conditional i.e. only upon deposit of the entire awarded amount, would there be a stay of the impugned order.

2. It is the appellants' case that the impugned order granting right of recovery to the respondent/insurer is erroneous because the driver of the offending vehicle was holding merely a Learner's Licence and another person who holding a valid Driving Licence is required to sit alongwith, the

driver with the Learner's Licence, but no evidence was led to prove that such a person accompanied the driver.

3. The said order has been impugned on the ground that it is now settled law that the learning driving licence is a due licence and that it would not be open to the Insurance Company to avoid payment because the learning driving licence was not proper or that the driver was not duly licensed. The learned counsel for the appellant refers to the dicta in ***National Insurance Company vs. Swaran Singh*** (2004) 3 SCC 297, which has been relied upon by this Court in MAC. App. No.251/2013 decided on 17.03.2016 titled as ***United India Insurance Co. Ltd. Vs. Veena Devi and Ors.***

4. ***National Insurance Company vs. Swaran Singh*** (*supra*) had held as under:-

14. It may be that Arjun was holding learner license. But the facts remains that he was accompanied and assisted by Dharmender who was holding a valid driving license. The observations of Supreme Court in National insurance Company v. Swaran Singh, (2004) 3 SCC 297 to the following effect need to borne in mind:

"The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the

rules framed thereunder. It cannot, therefore, he said that when a vehicle is being driven by a learner subject to the conditions mentioned in the license, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's license is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's license, the same would run counter to the provisions of Section 149(2) of the said Act. If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree."

5. Indeed the summary of findings in ***National Insurance Company vs. Swaran Singh*** (*supra*) reads as under:-

".... SUMMARY OF FINDINGS :

The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or [Section 166](#) of the Motor Vehicles Act, 1988 inter alia in terms of [Section 149\(2\)\(a\)\(ii\)](#) of the said Act.

(iii) *The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of [section 149](#), have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards 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.*

(iv) *The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(v) *The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.*

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under [section 149\(2\)](#) of the Act.*

(vii) *The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.*

(viii) *If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.*

(ix) *The claims tribunal constituted under [Section 165](#) read with [Section 168](#) is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in [Section 174](#) of the Act for enforcement and execution of the award in favour of the claimants.*

(x) *Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of [section 149\(2\)](#) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled*

to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under [Section 174](#) of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of [Section 168](#) of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims....”

6. From the aforesaid, it is clear that if a driver had a valid learning licence, it would not be open to the Insurance Company to raise a plea that it was not being driven by a person who was not duly licensed.
7. In view of the above, the impugned order is set aside and the right of recovery against the appellant is quashed.
8. At this stage, it is noticed that there is a delay of 388 days in filing the appeal. It is sought to be explained on the ground that the *lis* has already been settled with the complainant by way of Compromise Deed dated

03.06.2013 i.e. on the date of the accident itself. The learned counsel for the appellant refers to the Settlement document at page 105 of the paper book, which is signed at Holy Child Nursing Home, to the effect that the claimant, Rajkumar had been taken to a hospital for treatment and medical treatment had been given to him and he had no lis against Santosh Tiwari-the driver of the offending vehicle bearing no. DL 12CC 8794 and that he would not initiate any legal proceedings apropos the accident; the appellant believed the same and was, therefore, surprised to receive the impugned order against him. Furthermore, the appellant's counsel all along told him that the case had been compromised and nothing adverse had come out of the proceedings. However, the Court would note that the appellant is a Chartered Accountant by profession. He is deemed to have better knowledge and understanding of court proceedings than a person not so professionally qualified. He ought to have been more diligent and alert. However, he alleges breach of faith and deficiency in service by his counsel and contends that he has a good case on merit as discussed hereinabove.

9. In the interest of justice, the delay of 388 days in filing the appeal is condoned, subject, however to payment of costs of Rs. 2 lacs to be paid to the Insurance Company.

10. After payment of Rs. 2 lacs, alongwith interest to the Insurance Company, the remaining amount shall be returned to the appellant.

11. Statutory amount of Rs. 25,000/- be returned to the appellant.

12. At this stage, the learned counsel for the appellant submits that he would like to voluntarily contribute the said amount of Rs. 25,000/-,

alongwith interest accrued thereon to the 'AASRA Fund' created by this Court for the benefit of treatment of burn victims at Safdarjung Hospital.

13. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J.

JULY 24, 2019

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