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

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Decided on: 17.12.2019

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MAC.APP. 930/2019

UNITED INDIA INSURANCE CO LTD Appellant

Through: Ms. K. Enatoli Sema, Adv. for
Mr. Amit Kumar Singh, Adv.

versus

ANIL KUMAR & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 52845/2019 – (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

MAC. APP. 930/2019 & CM APPL. 52844/2019

3. This appeal impugns the award of compensation dated 13.08.2019 passed by the learned MACT in MACP No. 1524/16, on the ground that recovery rights have not been granted against the owner and driver of the offending-insured vehicle, despite it being proven that the driving licence produced by the driver was fake.

4. Delhi Transport Corporation (hereinafter referred to as the 'DTC') and the owner of the vehicle had employed the respondent no. 1-Mr. Anil as

a driver, on his having presented a driving licence issued by the Transport Authority, Gurgaon, Haryana. He underwent the requisite training, his skills were tested and thereafter he was employed by DTC. The learned counsel for the appellant submits, that the appellant pleaded that the driving licence was issued from Licencing Authority, Agra. Subsequent to the motor accident, the insurer carried out investigation and found that the said driving licence, which was purportedly issued by the RTO, Agra, was fake. It is this document which formed the basis for the issuance of the subsequent licence by the Transport Authority, Gurgaon, Haryana. Therefore, it is argued that the original licence being fake, the subsequent endorsement for issuance of another licence would likewise be invalid. The impugned order has dealt with issue as under:-

“.....In view of the above, it is being submitted on behalf of R-3/Insurance company that it was entitled to the recovery rights against R-1 & R-2 as the original DL of R-1/ driver of offending vehicle no. DL 1PB 2854 was fake, however the said submissions made on behalf of R-3/Insurance company are devoid of any merits and contrary to the record, especially in view of the DL Verification Report (Ex. R2W1/6) filed by the IO alongwith DAR, which contains an endorsement from the Transport Authority, Gurgaon (Haryana), wherein it has been mentioned that as per their record, DL No.:2887/G/09 was issued in the name of Anil Kumar S/o Hukam Singh for motorcycle/LMV/HTV/HPB and was valid from 20.11.2009 to 19.11.2012. In addition to this. Driver Test Proforma /Certificate (Ex. R2W1/3) has also been filed on record regarding the training undergone by R-1/ driver of the offending vehicle at Nandnagii Training School, DTC, New Delhi. In the instant Case, it is pertinent to note that the accident took place on 5.3.2011 and on that day, R-1 Anil Kumar (driver of the offending vehicle) was having "lid and effective driving license as was evident from DL Verification Report (Ex. R2W1/6) filed

by the IO alongwith DAR, wherein it has been specifically stated that as per the record of Transport Authority, Gurgaon, DL NO.2887/G/09 was issued in the namd of Anil Kumar S/o Hukam Singh for motorcycle/LMV/HTV/HPB and was valid from 20.11.2009 to 19.11.2012, which covers the date of accident i.e 05.3.2011. Thus, in view of the above discussion & observations and in view of the material on record, the R-3/Insurance company shall-not be entitled to recovery rights against R-1 (driver) and R-2 (owner of offending vehicle) in the fact and circumstances of the present case and accordingly, respondent no. 3/ United India Insurance. Company Ltd., shall only be liable to pay the award amount to the petitioner/injured herein.”

5. The appellant contends that being a public transport authority, there is a higher duty cast upon it to verify the genuineness of the driving licences of its drivers/employees. She refers to the decision of this Court in *Delhi Transport Corporation vs. United India Insurance Company Limited and Ors.*, MAC. APPs. 1081-1088-1089-1091-10921093-1094-313-1022 & 194/2017, decided on 16.05.2017, which held, *inter alia*, as under :-

“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)."

6. What emanates from the discussion in the aforecited case is that DTC had not led any evidence to prove that it had verified the driving licence of the driver and tested his skills. In other words he had not undergone the requisite training with DTC before his employment. In

the present case, however, DTC had considered the licence to be valid since it was issued by the Gurgaon Transport Authority. There is nothing on record to prove that DTC was aware that the said licence was fake. Indeed, R-2W-1 Dharambir Singh who was an eye-witness to the accident was summoned by the appellant. He deposed that he used to work at DTC as ATI, that he was posted at Ghumanhera and retired on 31.01.2018. He had denied the suggestion in his cross examination that DTC was aware that the driving licence produced by respondent no.1 was fake. Therefore, the appellant's contention of a higher degree of responsibility for a state transport authority is not applicable to this case, because the DTC had done all that it needed to before employing the driver. Also there is nothing on the record to show that DTC was not aware of such licence being fake.

7. Hence, in the absence of any substantial evidence on record, the owner of the vehicle despite knowing that the driving licence was fake persisted to employ the driver to drive the insured vehicle, cannot rely upon the exception carried out in the decision of the Supreme Court in *Pepsu Road Transport Corporation vs. National Insurance Company* (2013) 10 SCC 217, which has observed as under:

“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.

(emphasis supplied)

8. Therefore, as per *Pepsu (supra)*, if to the vehicle owner/insured the driving licence of the prospective driver appeared to be valid on the face of it and he had satisfactorily tested the skills of the driver, before employing him, he would be covered for liability against claims. In the present case, the driving licence was evidently issued by the Transport Authority, Gurgaon, Haryana. The earlier one was issued by the Agra Authority in the year 2004-2005; it would have then been valid only for three years for a commercial vehicle which ought to have expired in the year 2008. The driving licence on the basis of which the driver was employed was valid from

20.11.2009 to 19.11.2012. Furthermore, the said driver had undergone the requisite training at Nandnagri Training School, DTC, New Delhi. He was issued a Driver Test Proforma/Certificate (Exhibit R-2W1/3) on the basis of such test.

9. In view of the above, the facts of the present case are distinguishable from *Delhi Transport Corporation (supra)* relied upon by the appellant. That being the position, employer-DTC would be covered under the test laid down in *Pepsu (supra)*.

10. The impugned order calls for no interference. There is no merit in the appeal. The same is accordingly dismissed.

DECEMBER 17, 2019

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NAJMI WAZIRI, J

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