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

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Reserved on: 29.11.2022

Pronounced on: 16.12.2022

+ **MAC.APP. 418/2008 & CM APPL. 10655/2008**
(Additional Evidence), CM APPL. 10656/2008 (Stay)

ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Amit Gaur and Mr.
Pradeep Gaur, Advocates

versus

KRISHNA BATRA & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 ("**M.V. Act**") against the Award dated 24.01.2008 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, Delhi ("**impugned Award**").
2. By way of the impugned Award dated 24.01.2008, the learned Tribunal awarded a compensation of Rs. 1,18,810/- alongwith simple interest @ 9% per annum from the date of filing of the claim petition i.e. 05.02.2005 till its realization and further directed that the respondents were jointly and severally liable to pay the compensation amount. It was further directed that the

Insurance Company shall deposit the entire awarded amount within a period of one month.

3. At the outset, it is pertinent to mention here that vide order dated 24.11.2016 and 08.11.2019, respondent nos. 1, 2 and 3 have been proceeded ex-parte and the matter was taken up for final hearing today.

SUBMISSION OF THE APPELLANT

4. Mr. Amit Gaur learned counsel for the Appellant/Insurance Company limited his argument and contended that the learned Tribunal erred in placing the liability of payment of compensation amount on the appellant. He further contended that it has been proved on record that the Driver of the offending vehicle was not holding a valid driving licence at the time of incident and as such it would tantamount to breach of terms and conditions of Insurance Policy, accordingly, no liability can be fastened upon the appellant/Insurance Company for payment of the compensation amount.

COURT'S REASONING

5. Brief facts noted by the learned Claims Tribunal are as under:-

“...On 20.10.2004 at about 9.55/10 AM the petitioner was coming from Geeta Bhawan Temple to his residence at Malviya Nagar, New Delhi and she was struck from behind by R-1 who was coming from Shivalik A Block on motor cycle no DL 3SZ 3798 and it is stated that petitioner was dragged alongwith motorcycle for a distance because of which she received dislocation/fracture on her pelvis, head injury and injury on other parts of her body....”

6. Mr. Amit Gaur learned counsel for the Appellant/Insurance Company contended that the learned Claims Tribunal erred in placing the liability of payment of compensation amount onto the appellant as admittedly the driver of the offending vehicle was not holding a valid driving licence at the time of the incident.
7. In relation to liability of the Insurance company, the learned Claims Tribunal held as under:-

“As regard the liability of R-3 Insurance company in the WS filed stand taken on behalf of R-3 Insurance company was that since R-1 was not having a valid driving license and hence it was not responsible for any claim of the petitioner but no evidence in evidence of the R-3 Insurance company has been adduced and it has not been proved by R-3 insurance company that there had been any violation of terms and conditions of insurance company by R-2, the insure. Accordingly, I hold that R-3 Insurance company is liable to indemnify R-2 for the liability, he may have to face with because of the claim of the petitioner.

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An award for a sum of Rs. 1,18,810/- alongwith simple interest @ 9% per annum from the date of filing of the petition i.e. 05.02.2005 till realization is passed in favour of the petitioner and against respondents, who are jointly and severally liable to pay the compensation amount. 75% per cent of the award amount shall be kept in fixed deposit in a nationalized bank for a period of five years. Further the petitioners shall have the right to receive the interest on the amount kept in FDR directly without reference to the court on monthly basis.

R-3 Insurance Company Ltd. is liable to indemnify R-2 for the claim of the petitioner and is directed to deposit the award amount within the month from today.”

8. The Appellant filed an application being CM 10656/2008 under Order XLI Rule 27 CPC for leading additional evidence before

this Court. Vide order dated 24.11.2016, this Court permitted the Appellant to lead additional evidence. Pursuant to order dated 24.11.2016, statement of Mr. Ravinder Kumar Shami, Judicial Assistant, Record Room (Criminal) South, Saket Court Complex, New Delhi was recorded which reads as under:-

*“I am working as Judicial Assistant in Record Room Criminal, Saket Court, Delhi. I have brought the Judicial file of case titled "State v/s Ramu" pertaining to FIR No. 924/2004 PS. Malviya Nagar, Delhi. As per record, the case "State v/s Ramu" has finally been disposed of on 29.04.2011 and consigned to record room vide Goshwara No. 108/11. As per record, notice against accused "Ramu" was issued on 09.03.2007. The copy of notice to accused "Ramu" is Ex. AW-1/A(OSR). **Further, as per record, the accused "Ramu" pleaded guilty vide statement dated 29.04.2011.** The copy of the same is Ex. AW-1/B(OSR). The copy of order of learned presiding officer dated 29.04.2011 is Ex. AW-1/C (OSR).”*

9. This Court perused Exhibit AW-1/A, the notice issued to the accused/Ramu under Section 251 of the Code of Criminal Procedure, 1973. It was specifically put to the accused/Ramu whether he was driving the vehicle without driving License and thereby committed an offence punishable under Section 181 read with Section 3 of the M.V. Act. He admitted his guilt before the Court of Metropolitan Magistrate. Hence it is proved beyond any doubt that the accused Ramu was driving the offending vehicle without any valid license.
10. While referring to the statement of Mr. Ravinder Kumar Shami, Judicial Assistant it has been argued by learned counsel for the appellant that it has been proved that the driver of the offending vehicle admitted the charges in the criminal cases thereby accepting that he was not holding a valid driving license at the

time of the alleged incident. The contention raised by learned counsel for the appellant stood un-rebutted as the appeal remained uncontested. Hence this Court is of the view that the driver of the offending vehicle was driving the vehicle without any valid Driving license and hence there is a breach of the terms and conditions of the insurance policy.

11. In view of the above finding, this Court is now examining the law in relation to scope of exoneration of the insurance company from the liability of payment of compensation amount.
12. It is pertinent to note that in the case of ***Skandia Insurance Co. Ltd. v. Kokilaben Chandravandan*** reported as (1987) 2 SCC 654, the need for beneficial construction of the provisions of the M.V. Act was emphasized by the Hon'ble Supreme Court in the following terms:-

“13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an

automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. ..In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation provision has therefore to be interpreted in the twilight of the aforesaid perspective.”

14. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. **When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in**

obesance to, the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.”

(emphasis supplied)

13. To give full effect to the beneficent nature of the Act, the Court must ensure that the compensation amount is disbursed to the claimants at the earliest. The practice in this regard has been to make the Insurance Company liable to satisfy the claim of the aggrieved third party and thereafter recover the same from the insured. This practice obviates the misery caused to the claimants in having to approach different forums to avail of their entitlement to just compensation under the Act.
14. This practice holds good even in cases where there has been a breach of terms and conditions of the insurance policy by the insured, wherein the Insurance Company first satisfies the claimants and thereafter gains recovery right against the insured. This becomes evident from the observation of the Hon'ble Supreme Court in the matter of *National Insurance Company Limited v. Swaran Singh* reported as *2004 SCC OnLine SC 37*. The relevant paragraph is being reproduced hereunder:

“110. The summary of our findings to the various issues as raised in these petitions is as follows:

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(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

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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.

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*(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.*

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*(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.”

(emphasis supplied)

15. Further in the case of ***Pappu and Ors Vs Vinod Kumar Lamba and Anr.*** reported as **2018 (3) SCC 208**, the Hon’ble Supreme Court while applying the law laid down in the case of ***Swaran Singh (Supra)*** has held that :-

“15. In the present case, the owner of the vehicle (Respondent No. 1) had produced the insurance certificate indicating that vehicle No. DIL- 5955 was comprehensively insured by the Respondent No. 2 (Insurance Company) for unlimited liability. Applying the dictum in the case of National Insurance Company Ltd. (supra), to subserve the ends of justice, the insurer (Respondent No. 2) shall pay the claim amount awarded by the Tribunal to the Appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent No. 1) in accordance with law.”

16. Upon considering the position of law as emanating from a perusal of the above judgments, this Court is of the view that compensation can be recovered from the Appellant at the first instance. However, recovery rights can be granted to the Appellant for recovering the said amount from the Owner in accordance with law, as the driver was not having a valid driving license at the relevant time.
17. In view of the above-mentioned detailed discussions herein above, the impugned Award is modified. The Appellant is hereby granted the recovery rights against the owner of the offending vehicle.
18. Accordingly, the appeal is disposed of in the above terms, and all the pending application stands disposed of. Statutory deposit, if any may be released to the Appellant. No order as to costs.

GAURANG KANTH, J.

DECEMBER 16, 2022

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