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

% *Decided on: 05.12.2019*

\+ MAC.APP. 821/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SURINDER NIJHAWAN & ORS ..... Respondents

\+ MAC.APP. 822/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SUNNY AHUJA & ORS ..... Respondents

\+ MAC.APP. 823/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

RAJEEV @ RAJEEV MALHOTRA & ORS ..... Respondents

\+ MAC.APP. 824/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

BHARTI BAJAJ & ORS ..... Respondents

\+ MAC.APP. 825/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

BIMLA AHUJA & ORS ..... Respondents

\+ MAC.APP. 826/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SHALU MAHNA & ORS ..... Respondents

\+ MAC.APP. 827/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

ANU GULATI & ORS ..... Respondents

\+ MAC.APP. 828/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SURINDER NIJHAWAN & ORS ..... Respondents

\+ MAC.APP. 829/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

KAMAL TALWAR & ORS ..... Respondents

\+ MAC.APP. 832/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

HARI OM MAHNA & ORS ..... Respondents

\+ MAC.APP. 833/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

POOJA TALWAR & ORS ..... Respondents

\+ MAC.APP. 834/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

JAI MALHOTRA & ORS ..... Respondents

\+ MAC.APP. 835/2016

THE NEW INDIA ASSURANCE COMPANY LTD ..... Appellant

Versus

ATUL KUMAR SHARMA ..... Respondent

\+ MAC.APP. 836/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

ARCHANA RAWAL & ORS ..... Respondents

\+ MAC.APP. 837/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SUNITA RAO & ORS ..... Respondents

\+ MAC.APP. 838/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SANJAY KUMAR JAIN & ORS ..... Respondents

\+ MAC.APP. 839/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

AJAY TIWARI & ORS ..... Respondents

\+ MAC.APP. 840/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

RAGHAV RAM & ORS ..... Respondents

\+ MAC.APP. 841/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SATISH KUMAR NIJHAWAN & ORS ..... Respondents

\+ MAC.APP. 842/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SURINDER NIJHAWAN & ORS ..... Respondents

\+ MAC.APP. 843/2016 & CM. APPL. 4125/2017

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

ANJU MAHAJAN & ORS ..... Respondents

\+ MAC.APP. 844/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

ANU GULATI & ORS ..... Respondents

\+ MAC.APP. 845/2016

THE NEW INDIA ASSURANCE COMPANY LTD ..... Appellant

Versus

BIMLA AHUJA & ORS ..... Respondents

\+ MAC.APP. 846/2016

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

SAROJ AHUJA & ORS ..... Respondents

\+ MAC.APP. 853/2016
THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

AMOL BAJAJ & ORS ..... Respondents

\+ MAC.APP. 854/2016 & CM APPL. 41412/2016
THE NEW INDIA ASSURANCE COMPANY LTD..... Appellant

Versus

SAPNA TALWAR & ORS ..... Respondents

\+ MAC.APP. 855/2016
THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

BIMLA AHUJA & ORS ..... Respondents

\+ MAC.APP. 856/2016
THE NEW INDIA ASSURANCE COMPANY LTD ..... Appellant

Versus

SURINDER NIJHAWAN & ORS ..... Respondents

\+ MAC.APP. 857/2016
THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Versus

BABY ASTHA MAHNA & ORS ..... Respondents

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advocates for appellant.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals impugn the award of compensation dated 16.07.2016 , passed by the learned MACT in Suit Nos. 305/11, 307/11, 308/11, 309/11, 306/11, 310/11, 21/16 and 190/11, 191/11, 192/11, 193/11, 194/11, 195/11, 196/11, 279/11, 280/11, 322/11, 323/11, 324/11, 325/11, 326/11,457/11, 257/11, 259/11, 260/11, 456/11, 657/11, 658/11 & 390/11, on the ground that the right of recovery against the owner and driver of the vehicle has not been granted. The quantum of compensation has not been challenged. Indeed the compensation stands duly paid to the claimants.

2. A passenger bus packed to the capacity, was carrying passengers who in pious fervour, were on a pilgrimage from Delhi to Katra. Closer to the destination, when the bus entered hilly areas, it slipped into a ravine, resulting in the death of 13 passengers and serious injuries to 24 others.

3. The accident occurred on 20.06.2007. Almost a decade later, by an Award dated 16.07.2016, the learned Tribunal awarded the compensation to the victims. However, it declined rights of recovery to the insurer on the ground that the owner of the vehicle had proven that, he had engaged the driver of the vehicle after having duly satisfied himself, that the licence shown to him by the driver appeared to be valid and that the driver possessed requisite skills to drive the said insured vehicle.

4. The learned Tribunal had relied upon various judicial precedents, including *National Insurance Company Ltd. vs. Anjana Shyam & Ors. IV (2007) ACC 355 (SC)*; MAC APP. 172/2011; *National Insurance Co. Ltd.*

v. Prakash Chand & Ors. decided on 9th January, 2015; *Sardari & Ors. v. Sushil Kumar & Ors.*, II (2008) ACC 426 (SC); *New India Assurance Co. Ltd. v. Kusum & Ors.*, II (2010) ACC 518 (SC) and *United India Insurance Co. ltd. v. Sujata Arora and Others*, 2013 ACJ 2129.

5. The insurer had contended that, in the first instance the driving licence was fake. Secondly, that it did not bear the requisite endorsement from the relevant Transport Authority, to the effect that the driver could drive a passenger bus or any vehicle in hill areas, in terms of the requirement in Rule 185 (d) of the Himachal Pradesh Motor Vehicles Rules, 1999. The said Rule stipulates that the driver shall not drive a public service vehicle on any hill road, unless the driving licence has been enclosed for driving on hill roads by the Registering Authority. An Explanation to the said Rule is to the effect that, hill roads shall mean all roads of the State except those roads which may be excluded by the Government by a specific notification in the official Gazette.

6. The learned counsel for the insurance company submits that the legal requirement is specific for driving of vehicles in Himachal Pradesh, where the unfortunate accident occurred; that this requirement has been made mandatory because the skills for driving a vehicle in hill areas are of a separate kind, and such endorsement is only to ensure that the driver possesses the requisite skills so as to prevent any accident.

7. To a query put by the Court to the learned counsel for the appellant as to whether the endorsement for driving in hill areas is preceded by any trial or test by the relevant Transport Authority, the answer is that she will need to check it up. The rules are silent in this regard. No specific test has been prescribed nor is there any procedure laid down whereunder such test would

be undertaken by the relevant Transport Authority, to test the skills of the driver to drive in the hill areas.

8. The learned Tribunal has referred to the decision of the Supreme Court in *Lakhmi Chand vs. Reliance General Insurance,* (2016) 3 SCC 100, decided on 07.01.2016, which examined the issue as to, whether merely carrying more passengers than the permitted capacity in terms of the policy, at the time of the accident, was so fundamental that it amounted to breach of policy conditions, so as to allow the insurer to eschew its liability for damage caused to or by the vehicle. In the aforesaid judgment reference was made to *B.V. Nagaraju vs. Oriental Insurance Co. Ltd.*, (1996) 4 SCC 647, in which the said contention was rejected for the reason that the insurer had failed to show as to how the excess number of passengers had contributed to the causation of the accident. Therefore, merely because there were such additional number of passengers, it would not by itself be considered as a fundamental breach of the policy conditions. Furthermore, it referred to its dicta in *National Insurance Co. Ltd. vs. Swaran Singh & Ors.*, (2004) 3 SCC 297, wherein a three-Judges Bench of the Supreme Court had held, that the insurer himself shall not only show that the insured vehicle caused or was permitted to be used in breach of the policy but also that the damage which was suffered, flowed from such breach. It further held as under:

> " *(iii)......*
> *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......*
> *(iv) Insurance companies, 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 the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances 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 the 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……."

9. *Lakhmi Chand (supra)* held that the insurer had failed to produce any evidence to prove that the accident occurred on account of overloading of passengers. Referring to *B.V. Nagaraju (supra)*, it held that the policy would not come to an end unless the insurer was able to show that the breach was fundamental in nature. The Court found that the accident had occurred on account of rash and negligent driving of the offending insured vehicle.

10. In *Mukund Dewangan vs. Oriental Insurance Co. Ltd.*, 2017 14 SCC 663, a three-Judges Bench of the Supreme Court held *inter-alia,* that the person holding a valid driving licence to drive the motor vehicles classified as Light Motor Vehicles under section 10 (2) (d) of the Motor Vehicles Act, 1988, whose weight does not exceed 7,500 kg, is competent to drive a transport vehicle or omnibus, motor car, a tractor or a road roller, provided the unladen weight of the said vehicle does not exceed 7,500 kg. It held that

no separate endorsement on the licence is required to drive a transport vehicle of LMV class. It held *inter alia*:

> *"30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight, etc. The Central Government has the power to frame rules under Section 27, inter alia, regarding minimum qualification, forms, and contents of the licences, etc. Thus, we are of the considered opinion that the definition of "light motor vehicle" under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or roadroller, unladen weight of which, does not exceed 7500 kg, and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle.*
>
> *31. It is a settled proposition of law that while interpreting a legislative provision, the intention of the legislature, motive and the philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration."*

11. In this appeal, the Rule being examined is Rule 185 (D) of the Himachal Pradesh Road Transport Vehicles Rules, 1999, which reads as under:

> *"185. Special provisions on hill roads :-*
>
> *On all hill roads all drivers shall observe the following special rule namely:-*
>
> *(a) no motor vehicle shall overtake another, except at a place where the whole road is clearly visible for at least 180 metres ahead;*
>
> *(b) when two motor vehicles approach each other in opposite directions at a point where they cannot meet without danger of collusion, the vehicle proceeding down hill shall give way to the vehicle proceeding uphill and*

when such a meeting takes places in a dip or on a level stretch of road, the vehicle on the inside of the road, that, the side from which the hill side slopes upwards, shall give way ;

(c) the driver while taking turn on every bend and curve shall give horn; provided that it shall not be necessary to give a horn t a bend or curve near a hospital if an indication for not giving a horn has been put at that bend or curve ;

(d) the driver shall not drive a public service vehicle on any hill road, unless his license has been enclosed " for driving on hill roads" by the Registering authority ;

Explanation :- For the process of this rule, the expression " Hill Road" shall mean all roads in the State except these roads which may be declared by the Government by a notification in the official Gazette as plain roads'."

12. It does not mention as to how the endorsement on the licence is to be made. The List of Forms prescribed under the said Rules are silent in this regard. There is nothing provided in Rule 185 regarding the manner of making the endorsement nor does it prescribe any special written or driving test to be passed by the holder of a driver licence before such endorsement is granted. This issue already stands answered in the decision of High Court of Uttarakhand in *National Insurance Company Ltd. vs. Basanti Devi*, 2009 SCC OnLine Utt 383, which has held *inter-alia* as under:

" 6. I do not find any force in the submission advanced by the learned counsel for the appellant. Admittedly, the vehicle involved in the accident was insured with the appellant/National Insurance Company Ltd. and the driver of vehicle No. UA04B/4851 having the valid driving licence but the licence was not having hill endorsement. Paper No. 17C/6 is the photocopy of the driving licence available on record. Only on this point the

driver cannot be debarred or disqualified to ply the vehicle. The licencing authority after due care and adopting the due process of law has issued the licence. Generally, the rubber stamp is fixed on the driving licence for hill endorsement and no process is followed in this regard. If the stamp is not affixed in the driving licence, merely for this technical ground, the driving licence cannot be said to be invalid to ply the vehicles on hill routes. Therefore, mere absence of hill endorsement, the driving licence cannot be said to be invalid."

13. What emanates from the above is that the insurer has been unable to show whether there is a statutory requirement of any prior test of skills for driving on hill roads or that the endorsement is actually preceded by any special driving test.

14. The High Court of Uttarakhand in *Basanti Devi (supra)* has held that for such endorsement on the driving licence no specific process is followed. Therefore, on a mere technicality, the driving licence could not be said to be invalid to ply the vehicle on hill roads or to hold that the driver did not possess the requisite skills to drive on hill roads.

15. The preceding discussion leads to the conclusion that there is no requirement of passing a special driving test, for a driving licence to be valid in the hills because no such test is prescribed under the Act or the Rules. Furthermore, in *Oriental Insurance Co. Ltd. vs. Devki Devi & Ors.,* 2017 SCC OnLine Utt 1738, the High Court of Uttarakhand has held as under:

> *"9. The appeal has been filed on a limted ground that at the relevant time, the driver of the offending vehicle was not having the valid driving licence as on the driving licence there was no hill endorsement, therefore, it was not a valid driving licence. Similar controversy was before this Court in the case of National Insurance Co. Ltd. v. smt. Nidhi*

Gosain This Court relying upon a judgment of Hon'ble Apex Court in the case of Mukund Dewangan v. Oriental Insurance Co. Ltd. in Civil Appeal No. 5826 of 2011 decided on 03.07.2017 has settled the controversy that there is no requirement of hill endorsement. Since the controversy involved in this appeal has already been settled, thus the ground raised by the appellant of none having the hill endorsement on the driving licence does not subsist."

16. Relying upon the dicta of the Supreme Court in *Mukund Dewangan (supra)*, the Court had further held that there is no requirement of a specific "hill endorsement" on the driving licence for it to be valid.

17. Lastly, the learned counsel for the appellant further refers to the Central Motor Vehicles Rules, 1989. However, the Court would note that there is no such requirement laid down either under the Central Motor Vehicles Rules, 1989 or in the eponymous Rules. Therefore, the driving licence of the driver of the offending vehicle cannot be said to be invalid.

18. In view of the above, the appeals are without merit and are accordingly dismissed.

19. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

DECEMBER 05, 2019

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