

\$~11-14

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

%

Judgment delivered on: 02.05.2019

+ **MAC.APP. 1005/2018 & CM No.47533/2018**
+ **MAC.APP. 1008/2018 & CM No.47666/2018**
+ **MAC.APP. 1009/2018 & CM Nos.47678-79/2018**
+ **MAC.APP. 1011/2018 & CM No.47712/2018**

M/S PRINKLE CONSTRUCTION COMPANY Appellant
Through: Mr. Pradeep Kumar Arya and Mr. Priyanshu
Malik, Advocates.

Versus

THE NEW INDIA ASSURANCE CO LTD & ORS. Respondents
Through: Mr. D.K. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The learned counsel for the appellant states that the recovery proceedings through the SDM are at an advanced stage and the appellant apprehends precipitate action against it any day, for the recovery of 50% of the impugned amount. Thereafter, a stay of the impugned order is sought.

2. The appellant is owner of two trucks. Both were plying on a public road, one ahead of the other. At some stage, the smaller motor vehicle plying in between the said two trucks was crushed between the two trucks. Three human lives were lost in the tragedy. Both the vehicles were insured. It is the appellant's case that the worst scenario against it could be that the driver of the truck in the front did not have a valid driving licence, but this

aspect was never known to the appellant. Therefore, he cannot be held liable. He relies upon the judgment of *United India Insurance Co. Vs. Lehru & Ors. (2003) 3 SCC 338*, wherein the Supreme Court 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.”*

3. In the present case, the appellant has not produced any copy of the licence, therefore, his contention is without basis that he had a copy of the driving licence and had otherwise tested the skill of the driver, whom he engaged for driving of the vehicle, which was ahead of the crushed motor vehicle. Accordingly, facts of this case are distinguishable from the facts of

the *Lehru* (*supra*). Indeed the driver Udaivir Singh had deposed in his cross-examination as under:-

“.....My counsel had submitted one photocopy of my driving licence in the court and to the counsel for R6. I have seen the copy of the same and same is Mark-K, it is correct that the number of licence and date are not legible at point X and I also do not remember the correct number of driving licence. I have not brought the original licence because it has been lost. It was lost in-November - December, 2015, I had informed the police but I do not have any documentary proof in this regard. I had not informed the licencing authority about my lost driving licence, I do not remember the date when informed the police about my lost driving licence (Vol. Police had given me an acknowledgment to the effect but the same is not traceable). It is wrong to suggest that I am deposing falsely about any information having been given to the police concerned regarding the loss of driving licence, I had not mentioned the number and date of my driving licence in my information to the police concerned. I do not remember in which police station, I had given this aforesaid information. From 2015 onwards, i am not having any other driving licence except these photocopies i.e. Mark-K. It is correct that I was asked by the court-.and the counsel for Insurance Company vide its notice to produce the original driving licence but despite that I am not in a position to produce the same for non-availability. (Vol. I did not receive any notice), I did not apply for preparation of a fresh licence after 2015 till now. I have left my job two years ago as I am suffering from eye problem. It is wrong to suggest; that I was having false and, fake licence that is why I am concealing its number and other particulars deliberately in order to avoid the consequences of not having valid licence as on the date of alleged accident.”

4. The learned counsel states that the appellant had assured himself on the basis of a licence shown by the driver, who was involved in the accident that he had a valid driving licence. This contention, however, finds not even

a whisper in the impugned order. Furthermore, the appellant has not produced the driving licence, which formed the basis of his assurance. Interestingly, the driver of the vehicle has produced a driving licence, which was illegible.

5. Of the two vehicles, the driving licence of one driver i.e. Sudesh Kumar Rajoria was not disputed but the driving licence of the driver of other vehicle i.e. Udaivir Singh, which was ahead of the one driven by Sudesh Kumar Rajoria, was not produced despite a service of notice under Order XII Rule 8 CPC. The learned Tribunal has dealt with this aspect and reasoned as under:-

“ Admittedly, DL of the driver i.e; Respondent No. 1 Sudesh Kumar Rajoria is not disputed, but DL of driver i.e. Respondent No, 4 Udayveer Singh is disputed. He has failed to produce his DL before this court despite service, of the notice under section 12 rule 8 CPC. Though copy of the DL is on record, yet it is not legible to give an opportunity to the Insurance Company to summon the witness to prove its authenticity, Ld. Counsel, for the Respondents has argued that the service of legal notice upon: the Respondent No 4&5 was not proved due to Respondents were not obliged to produce DL of Respondent No. 4 and it was duty of Insurance Company to prove that he was not holding any DL or that his DL was fake which has not been proved. However, there is presumption of the service of the notice u/s 27 of General Clauses Act if it was sent by a registered post to correct address and did not return back unserved which has proved by postal receipts. Even otherwise the DL was supposed to be produced by the driver or owner if he was holding a valid DL, but it has not been done due to it may be presumed that driver was not holding a valid DL especially when he has alleged that his DL was lost but has failed to produce any FIR or document regarding lost of such DL. As such, Respondent No,

4 i.e. Ud.ayveer Singh was not holding a valid DL and it amounts to violation of the terms and conditions of the Insurance Policy of Vehicle bearing No, UP-14 AF 9346. In case of violation of the terms and conditions of insurance policy, Insurance Company is liable for recovery rights of the claim likely to be paid by It. In this case also, both the vehicles were, .insured by insurance company i.e. The New Indian Assurance Company Ltd. and violation of the terms has been proved qua Vehicle No, UP-14 AF 9346 and there is no violation of any terms of the insurance policy qua vehicle No. UP-14 AF 9345, due to Respondents No. 3 & 6 i.e. The New India Assurance Company Ltd. shall be entitled for recovery of 50% of the' entire amount from the Respondents No. 2, 4 and 5 jointly or severally as both vehicles are found involved in accident. Though copy of the DL is on record, yet it is not legible to give an opportunity to the Insurance Company to summon the witness to prove its authenticity."

6. Quite clearly, the driver himself was unable to show any valid number of the driving licence. He did not produce the original of the said licence nor did he report to the police or any authority that his licence was lost nor did he apply to the Licensing Authority for issuance of a fresh driving licence.

7. In the circumstances, the only conclusion that could be drawn is that the driver did not possess a valid driving licence and that the appellant too had not satisfied himself about the driving skills of the driver or that he possessed a valid driving licence.

8. The learned counsel for the appellant submits that because the vehicle in between the two trucks rammed into the truck ahead, resulting in unfortunate fatalities, the truck ahead cannot be blamed for what the vehicle behind it did. It is argued that the crushed vehicle was obviously being

driven in a rash and negligent manner, otherwise it could not have resulted in the tragedy that it did. The Court is unable to accept the said contention because the said two trucks were plying on a highway at a certain speed, while a smaller vehicle, an autorickshaw with passengers was running between the trucks. There would be no reason for an autorickshaw to speed-up and ram itself into a motor vehicle moving ahead of it unless the vehicle in the front had come to a sudden stop leading to a multiple or chain accident, in which the autorickshaw crashed into the truck ahead, and then got crushed by the uncontrolled truck which came from behind, thereby leading to extinguishment of three lives. Indeed, the impugned order has reasoned and held as under:-

“13. I have heard the arguments of both parties and perused the record. The Charge-sheet filed by the Police is part, of record as Ex.PW1/4 and comprising of FIR, site plan, Court orders regarding the release of both offending vehicles on superdari and a notice u/s 133 of M.V. Act served upon the owner Dharamvir Singh by the police which was duly replied by the owner that Respondent No, 1 and 4 were driving both the offending vehicles at the time of accident: It is further revealed that Post Mortem Reports of deceased persons with MLC of injured Jitender are part of record and have proved that the death of all the occupants of the, vehicle being driven by Bharat was result of this accident. By the contents Of Charge-sheet, it stands proved that Ranjeet @ Rinku was the. Complainant of the FIR lodged after this accident and criminal case was lodged at his instance, He has deposed that he was running his shop at the spot of accident and even the spot of accident proved by the site plan prepared by the police has also corroborated this fact that the spot of accident was surrounded by various shops and offices of agencies and it may not be ruled out that PW4 was present at his shop and witnessed this accident caused by the rash and negligent

driving of both Dumpers which were being driven by Respondents No; 1 and 4 i.e. Sudesh and Udaivir. Even otherwise it has already .proved by the testimony of R4W1 and notice u/s 133 of M.V. Act served upon the owner of both vehicles that both the respondents were driving the vehicles at time of this accident. The Site plan prepared by the 10 has proved that the accident took place in the middle of the road which was not the lane of driving of the offending vehicles to drive. Though it was also not expected from the deceased to drive his vehicle with so many passengers in the middle of the road, yet the offending vehicles which were heavy duty vehicles were also not expected to drive in such a manner that they would not be able to apply its brakes in exigencies. As such, the mode arid manner of driving of the offending vehicles has proved that both drivers not only caused, this accident by their rash and negligent driving but also ran away from the spot after the accident. Both the vehicles were seized and got released on supardari. As such, it stands proved that both the offending vehicles were being driven by both the drivers in rash and negligent manner and driver of offending Vehicle No. UP-81AF-9346 applied sudden brakes without any reason which amounts to rash and negligent driving on the part of driver in the absence of any plausible; reason. Similarly, the Respondent No. 4 failed to maintain appropriate distance from the vehicle of the deceased and-also failed to apply its break and struck the vehicle of the deceased from behind which resulted into squeezing the vehicle Mo. UP-14AP-0019 between-both the dumpers and sustained fatal injuries by three-occupants and grievous injuries by injured Jitender. One more fact is pertinent to mention here that the-Respondent No. 4 Udayvir Singh has failed to produce his DL and has proved that he was driving the vehicle either without DL or with forged DL. He was main culprit of this accident as per' the version of eye witness Rinku who observed that the Vehicle No. -UP-81AF 9346 was more responsible to cause this accident, In view of the facts and circumstances, I am of the opinion that this accident was caused by the rash and negligent driving of the offending vehicles. Respondents No. 2

and 5 i.e. M/s. Prihkle Construction Company Ltd. is the-owner of the both vehicles and Dharmveer Singh is proprietor of this business entity and owner of the both vehicles is vicariously liable for rash and negligent act of Respondents No. 1 & 4 being employer. As such, all the Petitioners in all Petitions have discharged the onus to prove Issue No. 1 in all Petitions and this Issue is decided in favour of Petitioners and against the Respondents.”

9. The appellant is the owner of both the trucks, the one which stopped or slowed down suddenly and the second one which crushed the autoickshaw and the unfortunate passengers in it. Who knows, there might not have been any fatality had the rear truck not crashed into the autorickshaw.

10. For the aforesaid reasons, the Court finds no reason to interfere in the impugned Award. The appeals are without merits. It, alongwith pending applications, stand dismissed.

NAJMI WAZIRI, J.

MAY 02, 2019

sb