

\$~10 to 16

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

%

Date of Decision: 10th February, 2020

10

+ MAC.APP. 312/2019 & CM APPL.9427/2019

M/S A B GRAIN SPIRITS PVT LTD

..... Appellant

Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)

versus

SANDEEP JAIN & ORS

(M/S NEW INDIA ASSURANCE LTD)

..... Respondents

Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

11

+ MAC.APP. 313/2019 & CM APPL.9437/2019

M/S A B GRAIN SPIRITS PVT LTD

..... Appellant

Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)

versus

WAQAR AHMED & ORS

(M/S NEW INDIA ASSURANCE LTD)

..... Respondents

Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

12

+ MAC.APP. 314/2019 & CM APPL.9439/2019

M/S A B GRAIN SPIRITS PVT LTD

..... Appellant

Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)

versus

I.D. MOHAMMAD & ORS
(M/S NEW INDIA ASSURANCE LTD) Respondents
Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

13

+ MAC.APP. 315/2019 & CM APPL.9547/2019

M/S A B GRAIN SPIRITS PVT LTD Appellant
Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)

versus

RAJ KUMAR JAISWAL & ORS
(M/S NEW INDIA ASSURANCE LTD) Respondents
Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

14

+ MAC.APP. 316/2019 & CM APPL.9549/2019

M/S A B GRAIN SPIRITS PVT LTD Appellant
Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)

versus

NARGIS & ORS
(M/S NEW INDIA ASSURANCE LTD) Respondents

Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

15

+ MAC.APP. 317/2019 & CM APPL.9591/2019

M/S A B GRAIN SPIRITS PVT LTD Appellant
Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)
versus

GAURI SHANKAR& ORS Respondents
Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

16

+ MAC.APP. 319/2019 & CM APPL.9612/2019

M/S A B GRAIN SPIRITS PVT LTD Appellant
Through Mr.Rishabh Gulati, Ms.Nishtha,
Ms.Jyoti, Advocates along with
Mr.C.B. Singh, Vice President
(Operations)
versus

SOMARI & ORS Respondents
Through Mr.J.P.N. Shahi, Advocate for
respondent No.3/New India
Assurance Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the common award dated 24th
November, 2018 whereby the Claims Tribunal allowed seven claim petitions

against New India Assurance Company Ltd. and granted it recovery rights to recover the award amount from the appellant and the driver of the offending vehicle. The appellant is seeking setting aside of the recovery rights granted by the Claims Tribunal.

2. On 26th April, 2014, a bus bearing registration No.DL-1PC-6531 hit a TSR at Rani Jhansi road. The accident resulted in the death of Chandresh Ram and caused injuries to six persons, viz., Raj Kumar Jaiswal, Nargis, Id Mohammad, Gauri Shankar, Waqar Ahmed and Sandeep Jain. Seven claim petitions were filed in respect of the aforesaid accident which resulted in the common award.

3. The Claims Tribunal has granted the recovery rights to New India Assurance Company Ltd. to recover the award amount from the appellant on the ground that the driving licence of the driver was found to be fake. New India Assurance Company Ltd. has satisfied the awards by depositing the award amount with the Claims Tribunal.

4. Learned counsel for the appellant urged at the time of the hearing that the appellant engaged M/s. Aman AJ Corporate Services to provide licensed and well-trained drivers to the appellant. It is submitted that M/s. Aman AJ Corporate Services were required to verify the driving licence of the drivers before recommending them for appointment to the appellant. It is submitted that the appellant took the driving test of the drivers and appointed them on the belief that M/s. Aman AJ Corporate Services would have verified their driving licence. It is further submitted that the appellant engaged about 200 drivers through M/s. Aman AJ Corporate Services out of which the driving licence of two drivers were found to be fake. It is further submitted that the drivers submitted a form to the appellant certifying that they possessed a

genuine driving licence. Mr.C.B. Singh, Vice President of the appellant present in Court submits that the appellant is now appointing the drivers only after verifying the driving licence. It is submitted that the Insurance Company is not entitled to recovery rights against the appellant. Copy of the driver management agreement dated 01st April, 2013 between the appellant and M/s. Aman AJ Corporate Services is handed over and taken on record. Reliance is placed on *National Insurance Co. Ltd. v. Swaran Singh*, 2004 (3) SCC 297, *National Insurance Co. Ltd. v. Ramesh Kumari & Ors*, MAC.APP.75/2011, 79/2011, decided on 07th December, 2015 and *National Insurance Co. Ltd. v. Misso Devi*, 2016 Law Suit (HP) 1119.

5. Learned counsel for respondent No.3 urged at the time of the hearing that the driving licence of respondent No.2 was found to be fake and the Claims Tribunal has rightly granted recovery rights to respondent No.3. It is submitted that in similar matters, this Court has granted the recovery rights to the Insurance Company in respect of drivers appointed by DTC holding a fake driving licence. Reliance is placed on *DTC v. Kamal Kishore*, MAC.APP.1005/2017, decided on 27th July, 2018, *DTC v. United India Insurance Co. Ltd.*, MAC.APP.122/2018 decided on 27th July, 2018 and *United India Insurance Co. Ltd. v. Amit Kumar @ Ram Pal*, MAC.APP.188/2018 decided on 28th September, 2018.

6. In *DTC v. Kamal Kishore* (supra), the Claims Tribunal granted recovery rights to the Insurance Company to recover the award amount from DTC on the ground that the driving licence of the driver was found to be fake. DTC challenged the award on similar ground as taken by the appellant in the present case that DTC had taken the driving test of the driver and believed the original driving licence to be true. This Court rejected the

argument and upheld the recovery rights on the ground that DTC was duty bound to verify the genuineness of the driving licence before confirming the appointment of the drivers. Relevant portion of the said judgment is reproduced hereunder:

“1. The appellant has challenged the recovery rights granted by the Claims Tribunal to respondent No.2 to recover the award amount from the appellant on the ground that the driving licence of the driver was found to be fake.

2. Learned counsel for the appellant submits that the appellant was not aware, at the time of appointing the driver, that his driving licence was fake. It is further submitted that the appellant took the driving test of the driver at the time of the accident and the original licence produced by the driver was believed to be true.

3. This Court is of the view that the appellant, being a public corporation, it was their bounded duty to have verified the genuineness of the licence before confirming the appointment of the driver. In that view of the matter, taking the driving test of the driver and believing the driving licence produced by driver to be true, is not sufficient discharge of the duties. There is no infirmity in the recovery rights granted by the Claims Tribunals to the Insurance Company to recover the award amount from the appellant.

4. Learned counsel for the appellant submits that the appellant be granted recovery right to recover the award amount from the driver who was holding a fake driving licence.

5. The appellant is at liberty to recover the award amount from the driver in accordance with law.

6. The appeal is disposed of in above terms.”

7. Same view has been taken by this Court in ***DTC v. United India Insurance Co. Ltd.*** (supra). The relevant portion of the said judgment is reproduced hereunder:

“1. The appellant has challenged the recovery rights granted by the Claims Tribunal to respondent to recover the award amount from the appellant on the ground that the driving licence of the driver was found to be fake.

2. *Learned counsel for the appellant submits that the appellant was not aware, at the time of appointing the driver, that his driving licence was fake. It is further submitted that the appellant took the driving test of the driver at the time of the accident and the original licence produced by the driver was believed to be true.*

3. *This Court is of the view that it was the bounded duty of the appellant, being a public corporation, to have verified the genuineness of the licence before confirming the appointment of the driver. In that view of the matter, taking the driving test of the driver and believing the driving licence produced by driver to be true, is not sufficient discharge of the duties. There is no infirmity in the recovery rights granted by the Claims Tribunals to the Insurance Company to recover the award amount from the appellant.*

4. *Learned counsel for the appellant submits that the appellant be granted recovery right to recover the award amount from the driver who was holding a fake driving licence.*

5. *The appellant is at liberty to recover the award amount from the driver in accordance with law.*

6. *The appeal is disposed of in the above terms.”*

8. Same view has been taken by this Court in ***United Indian Insurance Co. Ltd. v. Amit Kumar @ Ram Pal*** (supra). The relevant portion of the said judgment is reproduced hereunder:

“1. The appellant has challenged the award of the Claims Tribunal to the limited extent that the Claims Tribunal has not given recovery rights to the appellant to recover the award amount from respondent No.3 (Delhi Transport Corporation).

2. *Learned counsel for the appellant submits that the driving licence of respondent No.2 (driver of the DTC bus) was found to be fake. It is submitted that the appellant examined the witness R3W1 who proved that the investigating officer of the police verified the driving licence of respondent No.2 and found the same to be fake.*

3. *Learned counsel for the respondent No.3 submits that the respondent No.3 was not aware, at the time of appointing the driver, that his driving licence was fake. It is further submitted that the respondent No.3 took the driving test of the driver at the time of the accident and the original licence produced by the driver was believed*

to be true.

4. *This Court is of the view that the respondent No.3, being a public corporation, was duty bound to have verified the genuineness of the licence before confirming the appointment of the driver. In that view of the matter, taking the driving test of the driver and believing the driving licence produced by driver to be true, is not sufficient discharge of the duties. This Court is of the view that, the appellant is entitled to recovery rights to recover the award amount from the respondent No.3.*

5. *Learned counsel for the respondent No.3 submits that the appellant be granted recovery right to recover the award amount from the driver who was holding a fake driving licence.*

6. *The appeal is allowed and the appellant is granted recovery rights to recover the award amount from respondent No.3.*

7. *Respondent No.3 is at liberty to recover the award amount from the driver in accordance with law.”*

9. This Court is of the view that it was the bounden duty of the appellant to verify the genuineness of the driving licence of the drivers before appointing them. Considering that the appellant was operating 300 buses on Delhi roads, merely taking the driving test and believing the driving licence of the driver to be true, is not sufficient discharge of their duty. Failure to verify the genuineness of the driving licence of the driver before employing him amounts to fundamental breach of the terms of the policy. Failure of the appellant to adhere to such duty has resulted in an unlicensed driver to drive on Delhi roads which has resulted in the accident in question which has taken away one valuable life and injured six persons. This Court is not satisfied with the explanation for the non-verification of the driving licence of the driver before employing him in the present case.

10. There is no merit in the appeals which are hereby dismissed. The pending applications are disposed of.

11. The appellant has deposited the award amount with the Claims Tribunal. The Claims Tribunal is directed to release the same to the claimants.

12. Copy of this judgment be given *dasti* to counsel for the parties under signatures of Court Master.

J.R. MIDHA, J.

FEBRUARY 10, 2020

dk

