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

Date of decision: 11.12.2023

+ MAC.APP. 21/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant
Through: Mr.Dhanajai Rana &
Ms.Gitanjali, Advs.
versus

ASHA & ORS

..... Respondents
Through: Mr.S.N.Parashar, Adv. for R-1
to 4.
Mr.Ankit Virmani, Adv.
(Amicus Curiae) and Mr.Shreya
Mathur, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 12.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal Dwarka Court, New Delhi (hereinafter referred to as the 'Tribunal) in MACP NO. 251/14/12, titled *Asha & Ors. v. Pankaj & Ors.*.

2. By the Impugned Award, the learned Tribunal has found that the accident in question was caused due to the rash and negligent driving of the driver of the dumper bearing registration no.HR-55F-0003 (hereinafter referred to as the 'Offending Vehicle'). The learned Tribunal has awarded a compensation of Rs.45,79,000/- along with



interest at the rate of 10% from the date of filing, that is, 05.11.2012, till its realisation, in favour of the claimants, that is, the respondent nos.1 to 4 herein. The learned Tribunal has further held that as the respondent nos.5 and 6 herein, that is the driver and owner of the Offending Vehicle, in spite of a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 being sent by the appellant, did not produce a valid and effective Permit for the Offending Vehicle, therefore, the “pay and recover” principle shall apply, that is, the appellant shall pay the awarded compensation in favour of the respondent nos.1 to 4 herein, however, have a right to recover the same from the respondent nos.5 and 6 jointly and severally. The appellant is aggrieved of the above direction.

Submissions by the learned counsel for the appellant

3. The learned counsel for the appellant, placing reliance on the judgements of the Supreme Court in *National Insurance Company Ltd. v. Challa Upendra Rao and Ors.*, 2004 (8) SCC 517 and *National Insurance Co. Ltd. v. Parvathneni*, 2009 (8) SCC 785, submits that the principle of pay and recover is directed by the Supreme Court in exercise of its powers under Article 142 of the Constitution of India. Ideally, once it is found that the offending vehicle was being driven without a Permit, the appellant should be completely exonerated from the liability to pay the compensation to the victim of the road accident. He submits that even if the principle of pay and recover is to be applied, before the release of the amount to the claimants, the owner of the offending vehicle should be made to furnish a security for the entire amount which the insurer will pay to



the claimants. For securing the Insurance Company, the offending vehicle should also be attached as a security. The necessary directions in this regard should also be issued to the Regional Transport Authority for ensuring and assisting the appellant in making the recovery of the compensation amount from the owner and the driver of the offending vehicle.

Submissions by the learned Amicus Curiae

4. On the other hand, the learned Amicus Curiae appointed by this Court vide order dated 19.04.2023, submits that the case of the appellant does not fall within the scope and ambit of Section 149 of the Motor Vehicles Act, 1988 (in short, 'Act') and, therefore, this would be a case of breach of contractual terms, if at all, by the owner of the Offending Vehicle. He submits that in such a situation, the principle of "Pay and Recover" would apply albeit only against the owner of the Offending Vehicle.

5. He submits that, in fact, there would be no breach of contract of insurance in the present case even by the respondent no.6-owner of the Offending Vehicle, inasmuch as there is no condition in the Insurance Policy which requires the Offending Vehicle to be driven only with a valid permit.

6. He submits that there are material contradictions in the testimony of PW2-Mr.Praveen Kumar, who was set up by the claimants as an alleged eye-witness to the accident. He submits that the learned Tribunal has, however, not noticed these contradictions and has proceeded to hold that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner.



Analysis and finding

7. I have considered the submissions made by the learned counsels.

8. This Court in its judgment in ***Gurmeet Singh v. New India Assurance Company Ltd. & Ors.*** 2023:DHC:7209, has considered the requirement of having a valid Permit for driving a motor vehicle at a public place, and has held as under:

“25. A reading of the above provisions would show that a Permit is granted in relation to a particular route/area/region. The route/area/region is, therefore, a prime consideration and an essential condition of a Permit. The same is sacrosanct, functional, and fundamental, with various provisions of the Act emphasising on the same. Driving of the offending vehicle in an area or on a route which is not permitted by a Permit would, therefore, amount to driving the motor vehicle without a valid Permit and shall be a fundamental breach of the conditions of an insurance policy.

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30. From the above judgments, it would be apparent that where a person is found driving a vehicle beyond the route or area or region for which the Permit has been granted, it would be a case of driving the offending vehicle without a valid Permit.

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37. It is, therefore, held that non-possession of a valid and effective Permit shall entitle the Insurance Company to seek a right to recover the compensation paid to the claimants from the owner of the offending vehicle. Such a right will also be available to the Insurance Company where the offending vehicle is being operated at the time of the accident at a place for which it does not have a valid Permit.”



9. In the said judgment, reliance was also placed on the mandate of Section 149 of the Act as also on the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh and Others*, (2004) 3 SCC 297.

10. In view of the above, the learned Tribunal has rightly applied the principle of Pay and Recover and directed that the appellant should pay the compensation amount to the claimants, that is, the respondent nos.1 to 4 herein, however, have a right to recover the same.

11. Though I find *prima facie* merit in the submission made by the learned Amicus Curiae that such right of recovery, where the only grievance is of lack of Permit, should be fastened singularly against the owner of the Offending Vehicle, however, in the absence of any cross objection/cross appeal by the respondent no.5, I would not like to consider this issue in detail in the present case. The said question is left open to be considered in an appropriate case.

12. Similarly, in the absence of any cross objection/cross appeal of the respondent nos.5 and 6, the issue whether there was, in fact, a condition in the Insurance Policy, issued by the appellant in favour of the respondent no. 6 herein, that the Offending Vehicle shall only be driven with a valid Permit, and in absence thereof, there is no violation of the Insurance Policy and, consequently, the appellant cannot be held entitled to recover the compensation amount even from the respondent no. 6 herein, is also not considered by this Court on merit.

13. Though the learned *Amicus Curiae* has sought to challenge the finding of the learned Tribunal on the accident having been caused by



the Offending Vehicle while being driven in a rash and negligent manner, in the absence of any cross objection/cross appeal of the respondent nos.5 and 6, and the appellant also not contending the same, this challenge is also not being considered in the present appeal.

14. In view of the above, I, find no merit in the present appeal. The same is dismissed.

15. This Court expresses its gratitude to the learned Amicus Curiae for his assistance.

Directions

16. This Court vide its Order dated 11.01.2016, had directed the appellant to deposit the entire awarded amount with the Registrar General of this Court. Subsequently, this Court vide its Order dated 15.03.2017, had directed that 50% of the awarded amount be released in favour of the respondent nos.1 to 4, that is, the claimants. Now that the appeal stands dismissed, the balance awarded amount along with interest be also released in favour of the respondent nos.1 to 4 herein, in accordance with the schedule of disbursement as prescribed in the Impugned Award.

17. The statutory amount deposited by the appellant along with interest accrued thereon be released to the appellant.

NAVIN CHAWLA, J

DECEMBER 11, 2023/Arya/RP

Click here to check corrigendum, if any