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

Date of decision: **12.07.2023**

+ MAC.APP. 344/2023
SHRI RAM GENERAL INSURANCE COMPANY LTD
INSURER Appellant
Through: Mr. Yasharth Kant, Adv.

versus

JUGNU KUMARI AND ORS Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 34730/2023 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Award dated 06.04.2023 passed by the learned Motor Accidents Claims Tribunal, (East District), Karkardoom Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MAC Case No.22/17, titled ***Jugnu Kumari v. Bano & Ors.***

3. The challenge to the Impugned Award is to a limited extent that as the offending vehicle was being driven without a valid permit, the appellant is not liable to pay the compensation awarded by the Impugned Award to the claimants and that the learned Tribunal has

Signature Not Verified directing so and reserving only a right to recover the paid

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amount from the owner and driver of the offending vehicle.

4. The learned counsel for the appellant placing reliance on the judgment of the Supreme Court in ***National Insurance Co. Ltd. v. Vidhyadhar Mahariwala & Ors.***, (2008) 12 SCC 701, submits that where the vehicle is being run without a valid permit and in violation of the conditions stipulated in the Insurance Policy, the appellant cannot be made liable to pay the compensation; liability remains of the owner of such offending vehicle.

5. I am unable to agree with the submission made by the learned counsel for the appellant.

6. In ***National Insurance Co. Ltd. v. Swaran Singh & Ors.***, (2004) 3 SCC 297, the Supreme Court interpreting Section 149 of the Motor Vehicles Act (as applicable then), has observed as under:-

“81. The submissions made on behalf of the petitioner may now be noticed. According to the learned counsel, sub-section (4) of Section 149 deals with the situation where the insurer in the policy purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) of Section 149 and in that view of the matter no liability is covered for driving of a vehicle without licence or fake licence. The submission ignores the plain and unequivocal expression used in sub-section (2) of Section 149 as well as the proviso appended thereto. With a view to construe a statute the scheme of the Act has to be taken into consideration. For the said purpose the entire Act has to be read as a whole and then chapter by chapter, section by section and word by word. [See Reserve Bank of India etc. vs. Peerless General Finance and Investment Co. Ltd. and others [(1987) 1 SCC 424 Para 33].



82. Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96(4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4) as well as sub-section (5) of Section 149 of the Act otiose, nor any effective meaning can be attributed to the liability clause of the insurance company contained in sub-section (1). The decision in Kamla's case (supra) has to be read in the aforementioned context.

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another



thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

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107. *We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”*

7. The Supreme Court has held that the right to avoid liability in



even if its defence is accepted, the Tribunal has the power to direct it to satisfy the decree at the first instance and then direct recovery of the same from the owner.

8. In ***Vidhyadhar Mahariwala*** (supra), the Supreme Court relied upon the judgment of ***Ishwar Chandra & Ors vs The Oriental Insurance Co. Ltd. & Ors.***, (2007) 10 SCC 650, wherein the appeal filed by the owner challenging the direction of the High Court to the effect that the Insurance Company shall be entitled to recover the amount of compensation paid from the owner of the vehicle and for such purpose the Insurance Company shall not be required to file a suit but may initiate the proceedings before an Executing Court itself, was dismissed. It was held that the Insurance Company therein would be entitled to recover the amount from the respondent no. 2 therein, the owner of the offending vehicle. Clearly, therefore, the right of the Insurance Company would be only against the owner and not against the claimant.

9. In the present case, such a right has been reserved in the appellant by the Impugned Award, by observing as under:-

“29. Now, the question arises as to which of the respondents are liable to pay the compensation amount. As insurance company has contractual and statutory liability to indemnify the insured. Counsel for insurance company has raised the issue of recovery rights against the respondents who are the driver and owner of the offending vehicle on the ground that the offending vehicle was being plying in that area without a valid permit. Insurance company has examined witness R3W1 Amit Sharma who proved the copy of permit and reply of Right to Information Act according to which the



offending vehicle had a permit to ply within the Municipal Area of Loni and the place of accident that was D Block Shastri Nagar, Ghaziabad was not covered in that permit route. No contrary evidence has been led by the respondent no. 1 & 2 to save themselves from the recovery rights. Based on the judgments of Hon'ble Supreme Court in Amrit Paul Singh Vs Tata AIG General Insurance Co. Ltd (2018) 8SCC 492 and Rani & others vs National Insurance Company Ltd (2018) 8 SCC 492, it can be said that though the insurance company has a liability to indemnify the petitioners but also simultaneously has a right to recover the compensation from respondent no. 1 & 2, the owner and driver of the auto-rickshaw because the insurance company has clearly demonstrated from record that the offending vehicle did not have a valid permit at the time of accident. Therefore, the respondents no. 1 & 2 failed to discharge the burden of proving the valid permit thereby entitling the insurance company to recover the compensation amount, from them. It is made clear that the liability of the respondent no. 1 & 2 shall be joint and several or as per law in this regard."

10. I therefore, find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

JULY 12, 2023/Arya/rp

[Click here to check corrigendum, if any](#)