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

Date of decision: <u>14.09.2023</u>

\+ **<u>MAC.APP. 270/2021, CM APPL. 34838/2021 & CM APPL. 34839/2021</u>**

MANGLA GOODS CARRIER ..... Appellant
Through: Mr. Kanwal Chaudhary, Adv.

versus

NATIONAL INSURANCE CO. LTD. & ORS. ..... Respondents
Through: Mr. S.L. Gupta, Mr. Ashutosh Sharma, Ms. Gunjan Sharma & Mr. Ankit Bhatnagar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (*ORAL*)</u>

1. This appeal has been filed by the appellant challenging the Award dated 02.03.2020 passed by the learned Motor Accidents Claims Tribunal-02, West District, Tis Hazari Courts, Delhi in Petition no. 78132/2016, titled ***Hemlata @Baby & Ors. v. Monu Kumar & Ors.***.

2. The limited challenge of the appellant against the Impugned Award is on the right granted to the respondent no.1 to recover the compensation paid to respondent nos.2 to 4 herein from the appellant. The appellant is the owner of the truck by which the accident had taken place resulting in the death of Shri Rahul.

3. The learned Tribunal, by the Impugned Award has granted a right to recover the compensation paid by the respondent no.1 to respondent nos.2 to 4 from the appellant and respondent no.5, holding that the driver of the offending vehicle, that is, respondent no.5 herein, was not having a valid licence to drive a Heavy Motor Vehicle (HMV) in view of Section 7 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'). The learned Tribunal held that in terms of Section 7 of the Act, the respondent no.5 could not have been granted a licence to drive a transport vehicle without issuance of a learner's licence first; the learner's licence itself could not have been granted unless the respondent no.5 had held a driving licence to drive a Light Motor Vehicle (LMV) for at least one year. The learned Tribunal held that in the present case, the respondent no.5 was granted a driving licence for the LMV on 16.07.2010; the licence was, however, endorsed for Medium Motor Vehicle (MMV) and HMV on 01.11.2010, that is, prior to the expiry of one year period. The learned Tribunal held that, therefore, the driving licence issued in favour of the respondent no.5 to drive the offending vehicle was invalid.

4. The learned Tribunal further held that though the respondent no. 5 had got examined Mr.Ankit Tyagi, Instructor, Om Sai Motor Driving Training School, B-21, Sector-10, Noida-201301 as R1-W2, to prove that the respondent no.5 was duly certified to drive a vehicle containing dangerous/ hazardous goods, his testimony was not creditworthy.

5. The learned Tribunal further held that as the driving licence had not been duly endorsed to authorize respondent no.5 to drive a vehicle which was carrying dangerous or hazardous goods, even otherwise, it would have been a case of the offending vehicle being driven by a person not holding a valid driving licence, thereby entitling the respondent no.1 herein to recover the compensation paid from the appellant.

6. The learned counsel for the appellant submits that through the testimony of R3-W2/Mr.Manhei, LDA-cum-Computer Assistant, District Transport Office, Tuensang, Nagaland, it had been proved that the respondent no.5 held a driving licence for driving HMV issued on 01.11.2010. He submits that as the owner of the offending vehicle, once the appellant had been presented with a driving licence, which on the face of it was valid, the respondent no.1 could not have been granted a right to recover the compensation paid from the appellant only because it is later discovered that the licence has not been validly issued by the RTO.

7. I find merit in the submission made by the learned counsel for the appellant. In ***United India Insurance Co. Ltd. v. Lehru and Others***, (2003) 3 SCC 338, the Supreme Court has observed as under:-

> *"**20.** 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, Sohan Lal Passi, and Kamla case. We are in full agreement with the views expressed therein and see no reason to take a different view."*

8. In the present case as well, though it cannot be disputed that the respondent no.5 could not have been issued the driving licence as on 01.11.2010, one year period of holding an LMV licence not having expired, at the same time, once the respondent no.5 has produced a driving licence which, on the face of it, appears to be validly issued, the appellant was not supposed to make further inquires on the authenticity of the said driving licence from the RTO. In fact, even the learned Tribunal has observed the same, as under:-

> *"35. Considering the dictum of the aforementioned jugments and the manner in which driving licence was issued to respondent No.1, there is no doubt that the driving licence*

> *of respondent No.1 was not a valid driving licence. However, one cannot lose sight of the fact that it cannot be expected from the owner of the vehicle to cross-check the authenticity of the driving licence of any driver engaged by the owner. So long as, the driving licence appears to be genuine and contains all the necessary endorsements, no liability can be imputed on the owner of the offending vehicle on the ground of breach of policy."*

9. However, the above observation is not sufficient to deny the respondent no.1 a right to recover the compensation paid, from the appellant. It had been proved on record that at the time of the accident, the offending vehicle was being used to transport LPG cylinders, which comes in the category of 'hazardous goods'. Though the learned Tribunal has doubted that the respondent no.5 had even completed the training course for driving a vehicle carrying hazardous goods, admittedly, the driving licence of the respondent no.5 did not contain an endorsement authorizing him to drive a transport vehicle carrying hazardous goods.

10. Rule 9 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the 'Rules'), reads as under:-

> ***"9. Minimum training and language comprehension requirement] for drivers of goods carriages carrying dangerous or hazardous goods***
> *(1) One year from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of*

> *those [specified in Schedule VIII of the Constitution] and English and also posseses a certificate of having successfully passed a course consisting of following syllabus and periodicity connected with the transport of such goods:*
>
> *xxxxx*
>
> *(2) The holder of a driving licence the certificate referred to in sub-rule (1), shall make an application in writing on a plain paper along with his driving licence and the relevant certificate to any licensing authority in the State in which he resides for making necessary entries in his driving licence and if the driving licence is in Form 7, the application shall be accompanied by the fee [as specified in the Table in rule 32.*
>
> *(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.*
>
> *(4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority."*

11. A reading of the above Rule would show that the driver of a goods carriage carrying dangerous or hazardous goods should not only be able to read and write at least one Indian language out of those specified in Schedule VIII of the Constitution, and English, but should also possess a certificate of having successfully passed a course consisting of the syllabus and periodicity connected with the transport of such goods and as specified in Sub-Rule 1 of Rule 9 of the Rules.

12. Sub-Rule 2 of Rule 9 of the Rules further requires that on completion of the course, the holder of the driving licence shall

make an application along with his driving licence and the relevant certificate to the licencing authority to make entry in his driving licence, on which application, the licencing authority shall make an endorsement in the driving licence to the effect that the driver is authorized to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

13. Rule 132 of the Rules casts an additional responsibility on the transporter and owner of goods carriage carrying dangerous or hazardous goods. Sub Rule 5 of Rule 132 casts an additional duty on the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of Rule 9 of the Rules. The same reads as under:-

> *"**132. Responsibility of the transporter or owner of goods carriage***
> *xxxxx*
> *(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules."*

14. In the present case, admittedly, the requisite endorsement was not made on the driving licence of the respondent no.5. The appellant, therefore, cannot claim that he had done his due diligence before handing over the vehicle carrying hazardous goods to the respondent no.5 for driving.

15. In similar circumstances, this Court in ***United India INS Co. Ltd. v. Saminuddin and Ors.,*** 2019 SCC OnLine Del 10534, has held as under:-

"5. What emanates from the above is that the owner was able to establish that the driver possessed the requisite driving skills as certified by the aforementioned Government-licenced Motor Driving Training School. However, it is nobody's case that mere possession of the certificate will necessarily result in the Transport Authority certifying and/or licencing the person as having the requisite skills to drive a hazardous-goods carrying vehicle. As the name itself suggests, a motor driving training school is a school/institute which trains candidates to drive motor vehicles. It purports to impart a trainee the requisite skills as well as teach them the basic road signs and rules related to driving of motor vehicles on roads.

6. Nevertheless, at the end of any such training, whenever a candidate appears before the Transport Authority, his motor driving skills and knowledge of the applicable rules are tested by the Authority. It is only when the candidate passes the tests that he is issued a driving licence. Mere possession of a certificate from a training school cannot substitute the statutory requirement of a Driving Licence to be issued by the relevant authority. For driving of hazardous-goods carrying vehicles, a further endorsement is required on the Driving Licence.

7. In the present case, for indemnification against insurance claims under the said policy, the insurer had proceeded in good faith, that the driver of the hazardous-goods carrying motor vehicle would have been duly licenced by the relevant Licencing Authority, to drive the said vehicle. But on the driving licence, there was no such endorsement. In other words, the driver had neither been tested nor approved by the Licencing Authority to drive the hazardous-goods carrying vehicle. There is a breach of policy condition, therefore, the owner of the vehicle would be liable to indemnify the loss

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> *9. In view of the above, the insurer will have the right to recover the awarded amount from the owner of the vehicle but first it shall pay the amounts to the claimants. It is so ordered."*

16. The High Court of Allahabad in ***Ramesh Chandra Tiwari v. Madan Singh and 4 Others*** NC no. 2021:AHC:36813, also examined the scheme of the Rules, and has held as under:-

> *"16. ……therefore by necessary implication any person handed over a vehicle that has the description to transport 'dangerous and hazardous goods', should necessarily possess appropriate endorsement to drive such vehicle after fulfilling the requirements prescribed under Rule 9 of the Central Motor Vehicle Rues, 1989.*
> *17. In absence of such endorsement impugned award cannot be faulted with and absence of a mandatory endorsement cannot be waived by shifting burden on the Insurance Company to prove whether at the relevant time of accident, transport vehicle carried dangerous or hazardous goods or not and whether such goods caused accident in fact that will be far too stretching the requirements of Section 149 (2) (a) (ii) of the Motor Vehicles Act. Thus the appeal fails and is dismissed."*

17. In view of the above dictum, even if it is accepted that the respondent no.5 had undertaken the certificate course for driving a vehicle carrying hazardous goods, in absence of an endorsement in the driving licence authorizing him to do so, it will remain a case of the respondent no.5 not having a valid and proper driving licence to drive a vehicle carrying hazardous goods.

18. In that view of the matter, the respondent no.1 has righty been granted the right to recover the compensation paid to the claimants from the appellant.

19. I, therefore, find no infirmity in the Impugned Award.

20. The appeal alongwith the pending applications is accordingly dismissed.

21. The statutory amount deposited by the appellant be released in favour of the respondent no.1 along with interest accrued thereon, to be adjusted against its claim against the appellant herein.

22. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 14, 2023/*rv/am*