$~31

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

\+ CM(M) 1993/2024 & CM APPL. 12440/2024

KASIM ..... Petitioner

Through: Mr. Shahzeb Ahmed, Mr. Shashi Kumar, Mr. Adeel Ahmad Khan and Mr. Wasil, Advs.

versus

NEW INDIA ASSURANCE CO LTD. & ORS. & ORS. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **29.02.2024**

CM APPL. 12441/2024 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM(M) 1993/2024

3. By way of the present petition, petitioner, who is the registered owner of the offending vehicle, is assailing the impugned order dated 01.05.2023 passed by the learned Presiding Officer, MACT (South-East), Saket Court, New Delhi in terms of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

4. Learned counsel for the respondent No.1/Insurance Company is present.

5. None is present for the respondent No.2/driver of the offending vehicle.

6. The long and short of the submissions made by learned counsel for the petitioner is that the respondent No.2/Suhail Hashmi had taken away the offending motorcycle, which was parked at his residence without his knowledge and consent. The grievance of the petitioner is that the learned Trial Court has directed the petitioner/registered owner to deposit a sum of Rs.10 lacs as a pre-condition for allowing him to file written statement.

7. The learned counsel for the petitioner has urged that a plausible defence is still open to the petitioner that he was not aware that the driver was not possessing a valid driving licence. Moreover, it is a case where the driver had taken away his motorcycle without his consent as well. Learned counsel has drawn the attention of this Court to the decision in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi and Others**[1] wherein the Supreme Court held as under :

> "**13.** Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. **It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case**. The earlier decision in *United India Insurance Co. Ltd.* v. *Lehru* was considered and the Bench observed that the *ratio* therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in *Lehru* (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and

[1] 2023 SCC OnLine SC 1398

caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:

‘(*iii*) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(*a*)(*ii*) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. **To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time**.

(*iv*) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(*v.*) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(*vi*) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

(*vii*) **The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.’**

14. More recently, in *Ram Chandra Singh* v. *Rajaram*[5], the issue before this Court was whether an insurance company could be

> absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. **This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, *per se*, would not absolve the insurer**."
>
> **{bold portions emphasized}**

8. On a careful perusal of the aforesaid decision of the Supreme Court, it is manifest that the impugned order dated 01.05.2023 cannot be sustained in law. No pre-condition can be put on the petitioner to deposit a sum of Rs.10 lacs before filing a written statement since he has raised a plausible defence, which of course would be tested during the course of trial.

9. Accordingly, the present petition is allowed and impugned order dated 01.05.2023 is set aside. Learned Trial Court is directed to take on record the written statement of the petitioner/registered owner of the offending vehicle and allow him to lead evidence during the course of the trial.

10. In aforesaid terms, the petition stands disposed of.

11. Copy of this order be sent to learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

FEBRUARY 29, 2024/ck