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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Judgment reserved on : 16<sup>th</sup> February, 2024**  
**Judgment pronounced on: 20<sup>th</sup> February, 2024**

+ MAC.APP. 204/2019  
NITCO LOGISTIC PVT LTD ..... Appellant  
Through: Ms. Sunita Hazarika, Mr.  
Mayank Yadav & Mr.  
Zalgoulen Kipgen, Advs.  
versus

RAJIV KUMAR & ORS (HDFC ERGO GENERAL  
INSURANCE CO LTD ) ..... Respondents  
Through: Mr. Sunil Kumar Verma, Adv.  
for R-1.  
Mr. Nikhil, Adv. for Insurance  
Company.

+ MAC.APP. 215/2019  
NITCO LOGISTIC LTD ..... Appellant  
Through: Ms. Sunita Hazarika, Mr.  
Mayank Yadav & Mr.  
Zalgoulen Kipgen, Advs.  
versus

HARIPAL & ORS (HDFC ERGO GENERAL INSURANCE  
CO LTD ) ..... Respondents  
Through: Mr. Sunil Kumar Verma, Adv.  
for R-1.  
Mr. Nikhil, Adv. for Insurance  
Company.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. This common judgment shall decide the above noted appeals preferred by the appellant/registered owner of the offending vehicle



under Section 173 of Motor Vehicle Act, 1988<sup>1</sup> assailing the impugned common judgment-cum-award dated 03.10.2018 passed by the learned Presiding Officer, Motor Accident Claims Tribunal<sup>2</sup> (South-West District), Dwarka Courts, New Delhi arising out of MACP No.1356/2016, titled '**Rajiv Kumar v. Nirmal Singh & Ors.**' as also MACP No.1355/2016, titled '**Haripal & Anr. v. Nirmal Singh & Ors.**', whereby respondent No.3/Insurance Company has been made entitled to recover the amount awarded to the claimants from the appellant.

### **FACTUAL BACKGROUND:**

2. In MAC.APP. 204/2019, shorn off unnecessary details, claimant/Rajiv Kumar met with a motor accident on 04.04.2014 when he was driving truck bearing No. DL-1M-4988 from Manesar towards Delhi involving another truck bearing No. HR-55J-2806, and sustained injuries. The claimant/injured filed a claim for compensation on 28.05.2014 against Nirmal Singh, the driver of the other vehicle, which was registered in the name of respondent No.2/present appellant herein and insured by respondent No.3/Insurance Company. The claim petition was allowed vide judgment dated 03.10.2018, whereby issue No.1 that the claimant sustained injuries towards rash and negligent driving of vehicle bearing No. HR-38S-9138 by respondent No.1 was decided in his favour. As regards respondent No.2, a total compensation of Rs.13,69,000/- was awarded to the claimant with interest @ 9% p.a. from the date of filing of the petition

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<sup>1</sup> Act

<sup>2</sup> Tribunal



i.e. 28.05.2014, till realisation. Although, the liability of payment of the compensation was fastened on the shoulders of respondent No.3/Insurance Company, the Insurance Company was also given the right to recover the amount of compensation from the registered owner i.e, respondent No.2/the present appellant.

3. In so far as MAC.APP. 215/2019 is concerned, the claimants are parents of deceased Pitesh @ Hitesh, who succumbed to the injuries sustained in the same motor accident that occurred on 04.04.2014, whereby the Tribunal awarded a total compensation of Rs.12,74,000/- to the claimants with interest @ 9% p.a. from the date of filing of the petition i.e., 28.05.2014, till realisation.

4. It is pertinent to mention here that the claimants instituted MAC. APP. 10/2019 and MAC. APP. 15/2019 seeking enhancement of compensation, which has since been dismissed by this Court vide a common judgment dated 24.05.2023. Hence, the main contest is between the appellant/registered owner and the respondent/Insurance Company.

### **LEGAL SUBMISSIONS**

5. Learned counsel for the appellant has urged that the impugned judgment-cum-award requires interference inasmuch as it was never the case of the Insurance Company that respondent No.1 was not possessing a valid driving licence and that no issue was framed with regard to such aspect, which left the appellant highly prejudiced. Pointing out that the appellant, in its written statement had clearly brought out that the respondent driver was possessing a valid driving



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licence and that no evidence worth its salt was led by the Insurance Company to show that the driving licence was fake or fabricated in any manner. Heavy reliance has been placed in **Rishi Pal Singh v. New India Assurance Co. Ltd. & Ors.**<sup>3</sup>

6. *Per contra*, learned counsel appearing for the Insurance Company, referring to the observation made by the learned Tribunal in paragraph (4) of the impugned common judgment-cum-award, submitted that it was their specific defence that no information about the accident had been given to the Insurance Company in compliance with Section 134(C) of the Act and that it was brought out by them during the course of evidence that no driving licence had been issued to the respondent No.1 by the Nagaland Transport Authority.

### **ANALYSIS AND DECISION**

7. Having heard the learned counsels for the parties and on perusal of the record, it would be expedient to reproduce the relevant observations made by the learned Tribunal while deciding the issue of liability to pay compensation, which go as under:-

**“41. LIABILITY (In both the cases bearing MACP No. 1355/16 & MACP No. 1356/16)**

The offending vehicle bearing no. HR -38S-9138 was being driven by respondent No. 1-Nirmal Singh, owned by respondent no. 2-Nitco Logistics Pvt. Ltd. and was insured with respondent no.3/HDFC Ergo General Insurance Co. Ltd at the time of accident and as such, respondent no.3/HDFC Ergo General Insurance Co. Ltd. being the 'principal tortfeasor', is liable to pay the awarded amount in both these cases bearing MACP No. 1355/16 & MACP No. 1356/16).

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<sup>3</sup> 2022 SCC OnLine SC 2119



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Further in the present case, it is being submitted on behalf of the R-3/Insurance company that R-1 Nirmal Singh (driver of the offending vehicle) was not holding any valid driving licence at the time of accident as was evident from the report/information dated 07.7.2014 of District Transport Officer, Tuensang, Nagaland and as such, it is being requested on behalf of R-3/Insurance company that it may be given right to recover the awarded amount from R-1 Nirmal Singh (driver) and R-2 Nitco Logistics Pvt. Ltd. (owner of offending vehicle).

In the instant case, the perusal of the record reveals that report/information qua verification of driving licence from District Transport Officer, Tuensang, Nagaland has been filed and in the said report dated 07.7.2014, it has been stated that driving licence no. N-19403/08 was not issued by the said office i.e. Office of District Transport Officer, Tuensang, Nagaland, which implies that the driving licence produced by R-1 Nirmal Singh (driver) was not a valid or genuine licence.

In addition to above, the perusal of the record reveals that the route permit and fitness certificate qua the offending vehicle (truck) bearing no. HR38S-9138 have also not been filed/proved on record by the R-1 (driver) or R-2 (owner of the offending vehicle).

Further, it is pertinent to note here that validity or genuinity, if any of the driving licence of R-1 Nirmal Singh (driver of the offending vehicle) or availability of route permit or fitness certificate qua the offending vehicle (truck) bearing no. HR38S-9138 could have been brought/proved on record by respondent no.1 Nirmal Singh (driver) or respondent no.2 Nitco Logistics Pvt. Ltd. (owner of offending vehicle), however, they have not led any evidence in this regard despite opportunity being given and in absence thereof, the R-3/ HDFC Ergo General Insurance Company Ltd. shall be entitled to recover the compensation amount (being payable by R-3/ Insurance company to petitioners herein in MACP No.1355/16 & MACP No. 1356/16) from R-1 Nirmal Singh and R-2 Nitco Logistics Pvt. Ltd., in accordance with law.

Hence, in view of the above, Issue No. 2 is decided accordingly.”

8. First things first, the proceedings before the Tribunal being in the nature of a “summary” one, there was no legal necessity to frame any specific issue as to whether or not the driver of the offending



vehicle was possessing a valid driving licence.<sup>4</sup> Possession of driving licence by the driver of the offending/insured vehicle is the fundamental requirement of law to be proven in accordance with provisions of the Act. It is borne out from the digitized Trial Court record that PW-2/Rajiv Kumar, in his evidence, produced a copy of the driving licence seized from the respondent No.1/Nirmal Singh during the course of investigation by the Police into the accident, which is Ex. PW-2/12, besides registered cover of the offending vehicle which is Ex. PW-2/11. The initial burden of proving that the offending vehicle was being driven by its driver with a forged and fabricated driving licence was upon the Insurance Company, which was not discharged, since neither such plea was taken in the written statement nor any witness was produced from the Transport Authority to substantiate such defence.

9. Assuming for the sake of convenience that there was an issue regarding the validity of the driving licence, the appellant/Insurance Company cannot be granted the recovery rights in view of the decision in the cited case **Rishi Pal Singh (supra)**, wherein although the driving licence of the driver of the offending vehicle had been found to be not having been issued by Nagaland Transport Authority, the Court observed as under:-

“7. If the owner has stated that driver had produced the driving license from Nagaland but no such license was produced on record, it is obviously a mistake on the part of the owner. However, such

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<sup>4</sup> **169. Procedure and powers of Claims Tribunals.** - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.



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aspect cannot be used to grant liberty to the Insurance Company to recover the amount from the owner when the driving license actually produced by the claimant themselves was from Una, Himachal Pradesh. It may be stated that falsus in uno, falsus in omnibus is not the principle applicable in India. Therefore, even if a part of the statement that the driver has produced the license from Nagaland is not correct, it is wholly inconsequential.”

10. In the cited case, the Supreme Court has referred to the decision in **United India Insurance Co. Ltd. v. Lehu**<sup>5</sup> and to a three judge’s bench judgment in **National Insurance Co. Ltd. v. Swaran Singh**<sup>6</sup>. Further, it was pointed out that a larger bench in **Swaran Singh (supra)** resolved the difference of opinion or conflicting judgment in the case of **New India Assurance Co. v. Kamla**<sup>7</sup> and **Lehu (supra)**, wherein it was held as under:-

“92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In *Lehu case* [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.

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99. So far as the purported conflict in the judgments of *Kamla* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] and *Lehu* [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] is concerned, we may wish to point out that the defence to the effect that the licence held by the

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<sup>5</sup> (2003) 3 SCC 338

<sup>6</sup> (2004) 3 SCC 297

<sup>7</sup> (2001) 4 SCC 342



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person driving the vehicle was a fake one, would be available to the insurance companies, 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 will have to be determined in each case.”

11. The decision in **Pappu v. Vinod Kumar Lamba**<sup>8</sup> was also cited with approval, wherein it was held that :-

“12. This Court in *National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

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17. This issue has been answered in *National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In para 107, the Court then observed thus :

“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

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<sup>8</sup> (2018) 3 SCC 208



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(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 an opportunity to defend at all. Such a course of action may also be resorted to 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.”

12. Therefore, what follows is that the only legal requirement which is expected from the owner of a vehicle is to verify the driving skills and not to run to the Licencing Authority to verify the genuineness of the driving licence before appointing a driver. In the instant matter, merely by placing of a report from the Transport Authority that the driving licence was fake, would not *ipso facto* lead to an inference that the appellant/registered owner of the offending vehicle and employer of the offending driver would be presumed to know that the driving licence of the latter was a fake. In the absence of any tangible evidence, that the respondent No.1/Nirmal Singh was not competent to drive the vehicle, it was not expected from the registered owner thereafter to verify the genuineness of the driving licence issued to the driver from the Licencing Authority.

13. Further, in so far as non-production of the permit and fitness certificate of the offending vehicle, the observation made by the learned Tribunal that respondents No.1 and 2 should have produced the permit as well as fitness certificate in their evidence cannot be



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sustained either. Evidently, the respondent/Insurance Company never served any notice upon respondent No.1. Further notice was not issued upon respondent No.2 to produce such documents on the record soon after the accident or for that matter during the course of long trial before the learned Tribunal. There was no specific averment in the written statement of the respondent/Insurance Company that there was any violation of the insurance policy since the registered owner was not having any valid permit and/or fitness certificate so as to absolve them from indemnifying the insured.

14. In view of foregoing discussion, the present instant appeals are allowed. The common impugned judgment-cum-award dated 03.10.2018 is hereby partly set aside to the effect that the liability to pay compensation is fastened upon the respondent No.3/Insurance Company and the respondent No.3/Insurance Company shall not be entitled to any recovery rights as against the appellant/registered owner.

15. The appeals are disposed of accordingly along with all the pending applications.

**DHARMESH SHARMA, J.**

**FEBRUARY 20, 2024/ck**