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

% ***Date of Decision: 11th December, 2024***

\+ **MAC.APP. 324/2022, CM APPL. 45135/2022 (stay)**

MRS. VANDANA .....Appellant

Through: Mr. S.N. Parashar, Advocate.

versus

1. NATIONAL INSURANCE CO LTD .....Respondent No.1

2. Sh. OMKAR
S/o Sh. Kishan Lal .....Respondent No. 2

3. Sh. SONU
S/o Late Sh. Ram ....Respondent No. 3

Through: Mr. Attin Shankar Rastogi, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (*Oral*)

CM APPL.45136/2022 (condonation of delay)

1. The Application under Section 5 of the *Limitation Act, 1963* read with Section 151 of the *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed on behalf of the Appellant/Owner of the offending vehicle, seeking condonation of delay of 2823 days in filing the accompanying Appeal against the impugned Award dated 28.01.2014.

2. It is submitted that the Award was passed on 28.01.2014, in the sum of Rs.2,82,429/- along with interest @7.5% p.a. against the Insurance Company, though *recovery rights have been granted* against the Appellant/owner of the offending vehicle. It is submitted that she has taken due care and caution in ensuring the validity and authenticity of the driver, at the time of his employment. She did not receive any communication from her counsel and it is only when the *Notice of the Execution Petition filed on 30.09.2019 was received by her in 2021 that she came to know about the impugned Award*. She appeared before the Execution proceedings and sought indulgence of the Tribunal and paid Rs.10,000/- on 21.12.2021 and Rs.20,000/- on 18.07.2022.

3. It is further submitted that after coming to know about the impugned Award in 2021, she applied for certified copies of some of the documents on 05.07.2022 and 30.08.2022. The delay of 2823 days thus, occurred in filing the present Appeal. It is submitted that the delay be condoned for the reasons explained in the Application.

4. *Learned counsel on behalf of the Insurance Company*, has opposed the Application on the ground that it is an Award of 2014. The Execution was filed in the year 2014 itself. There is no cogent explanation for the delay and the Application is liable to be rejected.

5. **Submissions heard**.

6. The Appellant has averred that she came to know about the impugned Award of 2014 only when she received the Notice of the Execution Petition in the year 2021, which was the year, during which COVID-19 was

prevailing. Considering that the Appellant is a woman and also for the reasons stated in the Application, *the delay is condoned.*

7. The Application is allowed and disposed of accordingly.

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8. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act', *hereinafter*) has been filed on behalf of the Appellant, against the Award dated 28.01.2014 *vide* which the compensation in the sum of Rs.2,82,429/- along with the interest @7.5% p.a. has been granted on account of injuries suffered by Mr. Sonu, in the road accident on 24.05.2009.

9. The *sole ground* of challenge to the Award is in respect of Recovery Rights granted against the Appellant. It is asserted that she had taken due care and caution and checked the driving license of the Driver at the time he was engaged. The driving license was issued on 12.01.2008 and was valid till 11.01.2011. The date of accident is 24.05.2009 at which time, the driving license was valid. Having taken all due care and caution, the recovery rights have been wrongly granted against her by the Ld. Tribunal against the Appellant.

10. ***Learned counsel on behalf of the Respondent/ Insurance Company,*** however, has referred to the testimony of the Owner, who appeared as R2W1 wherein she admitted she had asked the Driver to get his License renewed, which implies that she was aware of the date of expiry of the *Driving License* but failed to exercise due care and caution. She also admitted that the renewed license after 26.10.2008, was never submitted to

her. Therefore, she cannot claim exoneration from her liability to reimburse the Insurance Company on account of violation of the Insurance Policy.

11. **Submissions heard and Record Perused.**

12. *Briefly stated*, on 24.05.2009 at about 8.30 p.m. the injured was going on his motorcycle bearing No. DL-45-BK-4744. When he reached in front of Gate No. GH-12, Paschim Vihar, New Delhi, Bolero Jeep Car ('offending vehicle') bearing No. HR-55-FT-5186 driven by its driver in a rash and negligent manner, hit the petitioner. Consequently, the Claimant suffered grievous injuries.

13. FIR No. 218/09 under sections 279/337 of *Indian Penal Code, 1860* at PS Paschim Vihar, was registered.

14. Petition under Section 166 and 140 of the M.V. Act was filed by the Injured for grant of compensation for the injuries suffered by him in the accident. The sole question for consideration is whether the Recovery rights have been rightly granted against the Appellant, as the driving license of the Driver was fake.

15. To prove that the Driving License Ex.R3W1/X was fake, the Insurance Company, had examined R3W2/2, Sh. Shailender Singh, Investigator who had produced the Driving License Verification Report Ex.R3W1/1 issued by Licensing Authority, Kanpur, wherein it was mentioned that only 4006 licenses were issued since 01.04.1987 to 26.11.09 for alphabet 'O'. The Report indicated that the Driving License of the Driver was fake.

16. Even though no witness from the Transport Authority has been examined, but even if it is accepted that the Driving License was fake, it

needs to be further examined whether this factor in itself sufficient to grant the recovery rights against the owner.

17. Pertinently, the Insurance Company has examined Sh. Naresh Chand R3W3, LDC, Delhi Transport Authority, who had deposed that the Driving License of Sh. Omkar expired on 26.10.2008 and the same was renewed with penalty on 18.01.2011. Pertinently, the said Driving License which is claimed to have expired on 26.10.2008 is not available on record. Apparently, the driver may have been owning two Driving Licenses; one from the Kanpur Authority and the other of Delhi, however, it cannot be overlooked and ignored that driver was holding the Driving License issued by Kanpur Authority which was apparently valid on the date of accident i.e. 25.04.2009. Whichever way the facts of the present case may be analyzed, the owner cannot be held responsible, even if the Driving License of the driver on verification was found to be fake subsequently. In the circumstances, the recovery rights are hereby set aside and it is held that the Insurance Company is liable to pay the compensation.

18. The Appellant Smt. Vandana had appeared as R2W1 and tendered her affidavit of evidence, wherein she deposed that she had engaged Shri Omkar as a driver in the month of July, 2007 and had seen his Driving License which was valid till 26.10.2008. However, she produced the Driving License issued on 12.01.2008 in favour of driver Omkar and is stated to be valid from 12.01.2008 to 11.0,1.2011. The Appellant/Insurance Company has also produced the Report in respect of this Driving License and examined R3W2 Sh. Shailendra Singh, the Investigator in respect of this Driving License only. From the testimony of the owner it emerges that she had taken due

care and caution at the time of appointment of the Driver to ensure that he had a valid Driving License.

19. The Apex Court in *United India Insurance Co. Ltd. v. Lehru*, 2003 ACC 611 (SC) held that where the Owner has seen the driving license of the driver and satisfied himself about the driving skills of the driver and genuineness of his driving license, the Insurance Company would not then be absolved of liability.

20. The Apex Court in *Ram Chandra Singh v. Rajaram* (2018) 8 SCC 799, held that the Insurance Company could be absolved of liability to pay compensation in case of the driving License of the driver of offending vehicle being fake, if it is found that no attempt was made by the owner to ascertain whether the driver was having a driving license. It is only if the owner was aware that the license was fake, but still permitted such driver to drive the vehicle, that the Insurer would stand absolved. Mere fact that the driving licence was fake, per se, would not absolve the Insurer. This decision was reaffirmed by the Apex Court in *IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi*, 2023 SCC OnLine SC 1398.

21. In the case of *Oriental Insurance Co. Ltd. vs. Deepa & ors.,* MAC.APP. 1042/2016, dated 11.08.2017, wherein similar facts of accident having happened during the gap period of expiry and renewal of driving license, was considered. It was observed that the driver was holding a valid and effective driving license just few months prior to the date of accident, which reflected that he possessed the necessary skills and had the necessary competence and expertise to drive the vehicle. There was nothing to show on record that the lacked the skill to drive the vehicle. No inference could be

drawn that merely because the driving license was not renewed on the date of accident, contributed to the cause of accident.

22. It is also a settled proposition of law that whether there was a willful breach on the part of the insured, is a question to be determined on the facts of each case, as held in the case of *New India Assurance Col. Ltd. Vs. Kamla and Ors.* (2001) 4 SCC 342 as well as *Pappu and Ors. Vs. Vinod Kumar Lamba and Anr.* (2018) 3 SCC 208.

23. In the present case, it is abundantly clear that the Driving License of Respondent No. 2/Driver had expired on 26.10.2008 implying that the driver was holding a valid and effective driving license prior to the date of accident and possessed necessary driving skills. In fact, the driver had also assured the Owner that he had filed for renewal of the license. The driving license was issued on 12.01.2008 and was valid till 11.01.2011, during which period, the driving license was valid. Further, there is nothing to show in the impugned Award that the driver lacked the skill to drive the vehicle merely because the driving license was not renewed on the date of accident. *Therefore, the Ld. Tribunal erred in granting recovery rights to the Insurance Company/Respondent No. 1 against the Owner which is liable to be modified.*

24. The Appeal is allowed and disposed of accordingly along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 11, 2024/RS