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

% **Judgment reserved on : 01st February, 2024**
Judgment pronounced on : 01st April, 2024

+ **MAC.APP. 712/2018 & CM APPL. 31159/2018**

UNITED INDIA INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Amit Kumar Singh, Mr.
Prang, Ms. Chubalemla Chang,
Advocates.

versus

SARLA & ORS.

..... Respondents

Through: Mr. Kamal Kant Jha, Senior
Panel Counsel with Mr.
Saurabh Jha, Mr. Avinash
Singh & Mr. Gopal Kumar,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 26.03.2018, whereby the claim petition/application bearing No.76947/2016² passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, West District, Tis Hazari Courts, Delhi³, was allowed and compensation was

¹ The Act

² Claim Application

³ Tribunal



awarded to the claimant. The appellant agitates that the driver⁴ of the offending vehicle was not possessing a valid Driving Licence⁵ and hence, the learned Tribunal could not have fastened the liability to pay the compensation upon its shoulders.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the claimant/respondent sustained physical injuries in a motor accident, which took place on 27.06.2013, involving a Delhi Transport Corporation (DTC) bus bearing registration No.DL-1P-C-8420⁶, resulting in lodging of an FIR bearing No. 358/2013 with PS Rajouri Garden and a charge sheet was filed under Section 279/338 of the Indian Penal Code against the driver of the offending vehicle/bus. Subsequently, it was transpired that one Mr. Rajesh was the driver of the offending vehicle, which was owned by the DTC/respondent No.2 and insured with United India Insurance Company Limited/respondent No.3.

3. During the course of proceedings before the learned Tribunal, the Insurance company in its written submissions admitted the fact that the offending vehicle was duly insured with them *vide* policy bearing No. 0411003113P100563187, which was valid from 24.04.2013 till 23.04.2014 including the date of the accident. Further, a statutory defence was taken by the insurance company that

⁴ Section 2(9) “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

⁵ Section 2(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

⁶ Offending Vehicle



Rajesh/driver of the DTC bus, did not possess a valid driving licence and that his licence was fake.

4. From the pleadings of the parties, the following issues were framed by the learned Tribunal:

1. Whether the petitioner suffered injuries in an accident that took place on 27.06.2013 at about 11:20 AM involving DTC Bus bearing registration No.DL-IP-C-8420 driven by the respondent No.1, owned by the respondent No.2 and insured with the respondent No.3?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3. Relief

PROCEEDINGS BEFORE THE TRIBUNAL AND IMPUGNED JUDGMENT:

5. There is no challenge to the findings recorded by the learned Tribunal that the claim of the petitioner/PW-1 regarding respondent No.1/driver driving the offending vehicle in a rash and negligent manner had been duly proven. Thus, Issue No.1 was decided in favour of the claimant/petitioner.

6. As regards the quantum of compensation, the petitioner had deposed in her affidavit (Ex. PW1/A) that after the accident, she was admitted in ESI Hospital where she was diagnosed with fracture in her left leg and other grievous injuries on her body. As per the MLC on record, she had sustained 'proximal tibia' fracture on her left leg. In support of her claim, she relied on the Discharge slip (Ex.PW1/1). Further the MLC, Discharge summary of ESI Hospital and Pathak Clinic are unrebutted and not challenged by the respondents.



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7. The petitioner claimed in her evidence that she was self-employed and was engaged in the work of sewing/stitching and earning Rs.14,000/- per month. However, the petitioner was unable to prove this with any documentary evidence. In the absence of any evidence, the minimum wages of a semi-skilled labour were taken into consideration and the income was assessed at Rs.8528/- per month. Thus, considering that the petitioner would be fit to work within 2 months, the loss of income suffered during the treatment was assessed at Rs.17,056/- (Rs.8528 x 2).

8. Further, with respect to the Loss of future earning on account of permanent disability, Dr. Naresh Chandra/PW-2, who was one of the members of the Medical Board, examined and proved the Permanent Disability Certificate (Ex.PW2/1) issued by the medical board. The petitioner was found to be having 42% disability. But the learned Tribunal, considering her vocation, assessed the functional disability @ 30%. Accordingly, the loss of future earning was assessed at Rs.30,700/-. The relevant observations have been reproduced hereunder:

“27. PW2/Dr.Naresh Chandra, Ortho Specialist, Guru Gobind Singh Govt. Hospital, Delhi was one of the Members of the Medical Board constituted by Guru Gobind Singh Hospital which examined and assessed permanent physical disability of the petitioner. He proved the Permanent Disability Certificate in respect of petitioner issued by the Board as Ex.PW2/1. According to Ex.PW2/1, petitioner was found to be having permanent physical disability of 42% in relation to her left lower limb. Considering her vocation, functional disability of the petitioner in the present case is assessed as 30%.”



9. Lastly, the tribunal dealt with the issue of fake licence, as alleged by the insurer. The respondent No.3/insurance company examined R3W1/Raj Kumar Sharma, who was a clerk at the Regional Transport Office⁷, Mathura. He testified the fact that no driving licence bearing No.S-3238MTR/99 was issued by the RTO, Mathura. The insurer also examined Shakti Kewat/R3W2, the administrative officer, United India Insurance, who stated that a notice under Order X11 Rule 8 of the CPC (Ex.R3W2/2) was served upon the respondent No.2/registered owner⁸ for production of the driving licence of respondent No.1/driver. *Per Contra*, the counsel for respondent No.2 argued that DTC had taken due care and precaution at the time of employment of respondent No.1 as DTC driver and his record in driving has otherwise been unblemished.

10. The learned Tribunal, after considering the facts, *vide* paragraph (41) of the impugned judgment-cum-award dated 26.03.2018 held that DTC/respondent No.2 had taken due care in getting the licence of the driver verified and had taken all the necessary steps and reasonable care in employing the driver. Therefore, the insurance company cannot be absolved from its liability. Thus, a sum of Rs.5,60,000/- was granted as compensation to the claimant/petitioner Sarla. The relevant observations have been reproduced hereunder:

“41. In the instant case, it is evident from the testimony of R2W1/Chandra Pal that as a prudent employer, DTC had taken the driving test of respondent No.1/driver and had found him to be

⁷ RTO

⁸ Section 2(30) of MV Act: “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.



competent to drive the DTC bus. Respondent No.2 had also taken due care and precaution by getting the licence of respondent No.1 verified from Gurgaon Authority i.e. the place from where the old licence of respondent No.1 was got renewed. Since the owner had taken all necessary and reasonable care which a prudent man could have taken at the time of employing the driver/respondent No.1 therefore, the Insurance Co. cannot shy away from its responsibility and insist on pay and recover.”

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

11. The learned counsel for the Insurance Company vehemently contested that the original driving licence issued to the driver/Rajesh was fake and the driver subsequently getting a valid driving licence does not obliterate the initial illegality. Learned counsel, in support of his arguments, relied on a judgment of this court in **Delhi Transport Corporation v. United India Insurance Company Limited**⁹, wherein the DTC was held liable for not taking necessary steps with respect to the recruitment of the drivers as also testing the necessary competence of a person for driving a vehicle. *Per Contra*, learned counsel for the DTC/registered owner submitted that unless it was proved that the driver of the offending vehicle was at fault or was negligent; the insurance company shall be held liable to pay the compensation.

GROUND FOR APPEAL:

12. In the instant appeal, the impugned judgment-cum-award dated 26.03.2018 has been assailed *inter alia* on the grounds that once there was a breach of the terms and conditions of the policy, the insurer ought to have been given the recovery rights. Another objection taken

⁹ MAC APPL. 1081/2016



by the appellant in the present appeal is that once the driving licence was proved to be fake, a subsequent renewal of the same cannot take away the effect of a fake licence. In this regard, reliance was placed on **National Insurance Co. Ltd. v. Laxmi Narain Dhut**¹⁰.

ANALYSIS AND DECISION:

13. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court unhesitatingly finds that the instant appeal filed by the appellant/Insurance Company so as to avoid its liability to indemnify the registered owner of the offending vehicle i.e. respondent No.2/DTC, is devoid of any merits.

14. Evidently, as on the date of the accident i.e. 27.06.2013, respondent No.1/driver Rajesh was found to be in possession of the driving licence issued for the period from 06.10.2013 to 05.12.2013 by the Regional Transport Authority¹¹, Gurgaon. It is the testimony of R3W3, who produced the record of the driving license issued to respondent No.1 from RTA, Gurgaon that it was renewed on the basis of the old driving licence i.e. S-3238/MTR/99 issued by the Licencing Authority, Mathura. However, he failed to produce any document on the record as to what was the procedure involved in the issuance of the driving licence from the end of the RTA, Gurgaon. Since he was not involved in the process of renewal of the licence, he failed to state as to what were the formalities that were involved in completing the verification of the old licences and its renewal.

¹⁰ (2007) 3 SCC 700

¹¹ RTA



15. In all probabilities, it is but obvious that respondent No.1/driver might have undergone a fresh driving skill test before renewal by the RTA, Gurgaon. Be that as it may, the question that arises for consideration is as to what was the duty of respondent No.2/DTC at the time of giving employment to respondent No.1/Rajesh with regard to ascertaining the veracity of the driving licence produced. R2W1/Chander Pal, who appeared for the DTC, produced in evidence a copy of the contract agreement between the respondent No.2/DTC and the driver Rajesh, which is Ex.R2W-1/2, wherein the copy of the driving licence issued to respondent No.1/Rajesh was also annexed as Ex.R2W-1/3. Further, a copy of the letter dated 23.06.2011 was also brought on the record, addressed to the DTC and issued by the RTA, Gurgaon, verifying the driving license of respondent No.1/Rajesh.

16. The testimony of R2W1 would show that before employing respondent No.1/Rajesh, the DTC did check the veracity of the existing/renewed driving licence from the concerned authority. There was nothing more required in all fairness. To hold that the employer DTC should have ascertained the genuineness of the original driving licence from the RTO, Mathura as well, would not be fair and rather incongruous with the mandate of the law. A reference can be made to the decision in the case of **Nirmala Kothari v. United India Insurance Co. Ltd.**¹², whereby it was discussed that:

“10.While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake, however, **the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the**

¹² 2020 4 SCC 49



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licence or was guilty of wilful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.”

“12.While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. **It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence.** However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.” **{bold emphasized}**

17. Further, reference can also be invited to a three-judge bench of the Supreme Court in the case of **National Insurance Co. Ltd. v. Swaran Singh**¹³, wherein it was discussed that:

110(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.**

110(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

¹³ (2004) 3 SCC 297



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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.”** {bold emphasized}

18. In view of the foregoing discussion, it is difficult to discern that the respondent No.2/DTC had failed in its duties to verify the genuineness of the driving licence. Hence, the present appeal is dismissed. The amount of compensation be deposited by the appellant/Insurance Company with the Registrar General of this Court with accrued interest uptill date and on such deposit, the same be released to the respondent No.1/claimant in terms of the directions passed by the learned Tribunal contained *vide* the impugned judgment-cum-award dated 26.03.2018.

19. The pending application also stands disposed of accordingly.

DHARMESH SHARMA, J.

April 01, 2024

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