



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 05th February, 2024**
Judgment pronounced on: 08th February, 2024

+ **MAC.APP. 401/2013**

RAJENDER PAL & ANR

..... Appellants

Through: **Mr. Alok Sinha and Mr. Vijay Kumar, Advs.**

versus

ANITA KANTHWAL & ANR

..... Respondents

Through: **Mr. J.P.N. Sahi, Ms. Aastha Kaushal and Ms. Musnmat, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. Court notice has been served upon respondent No. 2/Insurance Company. Learned counsel for respondent No. 2 /Insurance Company has submitted that they have already been discharged from the liability to pay compensation by the learned MACT, since the offending/insured vehicle was admittedly being driven by a minor i.e. appellant No. 2 in the present appeal.

2. Shorn off unnecessary details, appellant No. 1/registered owner and appellant No. 2/driver of the offending/insured vehicle, have assailed the impugned judgment-cum-award dated 21.08.2012, passed by the learned Presiding Officer, MACT, South-01, Saket Courts, New Delhi, whereby the claim for compensation moved by the



petitioner/respondent No. 1, who suffered permanent injuries in a motor accident, was allowed. Further, since the driver of the offending/insured vehicle was a minor, the plying of the offending/insured vehicle was deemed to be a fundamental breach of the conditions of the insurance policy and the Insurance company was absolved from its liability to pay compensation, and the liability to pay compensation has been fastened upon respondent No. 2/registered owner, who is appellant No.1 in the present appeal. Learned counsel for the appellants has vehemently urged that it is a settled proposition of law that even in a case of fundamental breach of policy, the liability to pay compensation shall be initially placed on the insurance company, which may be granted recovery rights as against the registered owner and/or driver, jointly and severally.

3. In this regard, learned counsel for the appellants has placed reliance upon the decisions in (i) **Oriental Insurance Co. Ltd. v. Krishna Batra & Ors.**¹ and (ii) **Pappu and Others v. Vinod Kumar Lamba and Another**².

4. Having heard the submissions advanced by the learned counsel for the appellants at the Bar and on perusal of the record, the submissions advanced are worthy of consideration.

5. First things first, it would be expedient to reproduce the relevant observations by the learned MACT on the issue of fixation of liability to pay compensation, which reads as under:

¹ MAC.APPL. 418/2008



“On the question of liability, it is submitted by counsel for insurance company that driver of the offending vehicle namely Raghav Kumar/minor was not holding valid driving licence on the date of accident. This amounts to fundamental breach condition of policy, thus insurance company is liable to pay compensation to petitioner. Perusal of material available on record suggests that driver/first respondent was minor at the time of accident and was not in possession of valid and effective license to drive the offending vehicle. It is also found from opening lines of cross-examination of Sh. Rajinder Pal/owner that he admitted that on the date of accident the driver of the offending vehicle was not holding a driving licence and voluntarily stated that driver was minor. In view of admission of owner/respondent no.2. It is established that respondent no. 1 was minor and not in possession valid and effective driving licence to drive the offending vehicle at the time of accident, which was violation of the terms and conditions of insurance policy and hence, insurance company is absolved from its liability. The liability to pay compensation is thus fastened upon respondent no.2/owner.”

6. On a careful perusal of the aforesaid observation, evidently the offending vehicle, which was admittedly insured for third party liability, was being driven by a minor. The cited case of **Krishan Batra (supra)** and **Pappu (supra)** by this court, have relied on the decision in the case of **National Insurance Company v. Swaran Singh & Ors³**, delivered by a three-judge bench of the Supreme Court, in which issues arose in the context of validity of the driving licence; not holding a valid driving licence; and the offending driver possessing a driving licence for a category of vehicles, but driving a vehicle of a different category. The conclusions arrived at by the Supreme Court, after referring to and examining a plethora of case laws, are as under:

² (2018) 3 Supreme Court Cases 208.

³ (2004) 3 SCC 297



110. The summary of our findings to the various issues as raised in these petitions is as follows:

- (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
- (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the Said Act.
- (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 of 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 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.
- (viii) If a vehicle at the time of accident was driven by a persona having a learner's licence, the insurance companies would be liable to satisfy the decree.
- (ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se



between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured falls to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

[Underlined portion emphasised]

7. In view of the above stated proposition of law, it would be expedient to rely on the observation contained in conclusion (vi). Avoiding a long academic discussion, it is evident that the policy of insurance clearly stipulated that the insured vehicle shall not be driven by a minor and/or a person who was not holding a valid driving licence. However, even in case of fundamental breach of policy conditions, vide Clause (x) and Clause(xi), it follows that in the larger public interest, the insurance company can be made liable to pay the compensation, and thereafter may exercise the recovery rights granted to it, as against the owner and/or driver, jointly and severally.

8. In view of the forgoing discussion, the present appeal is allowed and the impugned judgment-cum-award dated 21.08.2012 is hereby



set-aside. The liability to pay compensation to respondent No.1 is fastened upon the insurance company/respondent No.2, who may thereafter seek recovery of the amount of compensation paid from the registered owner/appellant No.1 and 2, as per the law.

9. Before parting with this appeal, it is pertinent to mention that this Court vide order 15.05.2013, directed the appellant to deposit a sum of Rs. 2.5 lakhs within four weeks the date of the order, with the Registrar General, High Court of Delhi. On such deposit, the same was ordered to be released to respondent No.1/Claimant in terms of impugned judgment-cum-award dated 21.08.2012. Hence, the statutory amount for filing the appeal also be released forthwith in favour of respondent No.1. The amount of Rs. 2.5 lakhs already released in favour of the claimant and the statutory amount shall be adjusted and the balance be paid by the respondent No.2/Insurance Company, with the direction to recover the same from appellant No.1 and 2, jointly and severally, as per the law.

DHARMESH SHARMA, J.

FEBRUARY 08, 2024

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