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

% ***Date of decision: 06th November, 2024***

\+ MAC.APP. 688/2015, CM APPL. 17767/2015 & CM APPL. 17768/2015

DELHI TRANSPORT CORPORATION .....Appellant

Through: Mrs. Avnish Ahlawat, Standing Counsel, DTC with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr.Mohnish Sehrawat, Advocates.

versus

UNITED INDIA INSURANCE COMPANY LTD & ORS .....Respondents

Through: Mr. Sankar N. Sinha, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

1. Appeal under *Section 173 of the Motor Vehicle Act, 1988* has been filed on behalf of the DTC/the registered owner of the offending vehicle against the Award dated 02.03.2015 whereby the ***Recovery rights*** granted to the Insurance Company/Respondent against the Appellant, has been assailed.

2. The Appellant/DTC against whom the recovery rights have been granted in favour of the Insurance Company, has raised the grievance that the verification of the Driving License of the driver at the time of his appointment was undertaken and the Report was issued by the Agra

Transport Authority that the Driving License was genuine. No fault, therefore, can be imputed to the Appellant.

3. It is further asserted that there was no wilful breach of any condition of the Policy on the part of the Appellant. It had taken due care and caution expected of an employer in verifying the genuineness of the Driving License at the time of appointment. Also, the driving Skill Test had been conducted before he was appointed as the driver. The Appellant/DTC having taken all the necessary steps, could not have been fastened with the recovery rights.

4. Reliance has been placed on *Pepsu Road Transport Corporation vs. National Insurance Company* Civil Appeal No.8276/2009, *United India Insurance Company vs. Lehru & Ors*. (2003) 3 SCC 338, *National Insurance Company Ltd. vs. Swaran Singh*, *DTC vs. Sobha Rani* MAC Appeal No.16/2009 decided on 12.03.2012 and *United India Insurance Co. Ltd. vs. Babita Rai & Ors*. MAC Appeal No.301/2012 decided on 29.10.2014.

5. *Learned counsel on behalf of the Insurance Company* has contended that learned Tribunal has rightly appreciated the evidence to conclude that DTC was liable to reimburse the compensation amount to the Insurance Company.

6. **Submissions heard.**

7. DTC had examined R2W1-Shri Hansraj, who had deposed that he is the conductor of Srinivaspuri Depot, DTC and was conversant with the facts and circumstances of the case. He deposed that Anil Kumar/Respondent No.5 was appointed as a driver in DTC through DSSSB *vide* Appointment Letter Ex.R2W1/1. At the time of his appointment, a copy of the Driving License of Anil Kumar was taken which is Ex.R2W1/2 and his driving skill

test was also taken and the Training Report is R2W1/3. Anil Kumar at the time of appointment was also medically examined by Board of Officers and the Medical Report is Ex.R2W1/4. R2W1-Shri Hansraj, further clarified that the copy of the Driving License which was taken at the time of the appointment had been send for verification and the Report Ex.R2W1/DX2 was received which certified the issuance of the License in the name of the driver.

8. The testimony of R2W1 on behalf of DTC fully establishes that not only was the copy of the Driving License taken at the time of Appointment of the driver in addition to ascertaining his driving skills, but the Verification Report of the Driving License was also obtained.

9. R2W1-Shri Hansraj has further clarified that after the accident, they had again got the Driving License of Anil Kumar verified and they got the Report Ex.R2W1/DX1, wherein the Licensing Authority stated that the Driving License was fake.

10. Pertinently, the Insurance Company examined R3W3-Shri Hari Om Maurya, Jr. Assistant, RTO, Agra, who produced the License Register and deposed that the Report Ex.R3W2/D2 with respect to the Driving License of Anil Kumar had not been issued by the Licensing Authority. In fact, the correct Report is dated 15.07.2013, which is Ex.R3W2/1, according to which this License had not been issued by the Agra Transport Authority.

11. In this regard, this Hon'ble Delhi High Court in the matter of *New India Assurance Co. Ltd. v. Sanjay Kumar*, ILR (2007) 2 Del 733, has held that although the onus is on the Insurer (Respondent No. 1 in the present case) to prove that there was breach of condition of policy, but once the record for the Licensing Authority is summoned to prove that the driver did

not possess a valid driving license, the onus would shift on the insured (the owner of the vehicle) who must then step into the witness box and prove the circumstances under which he acted and handed over the vehicle to the driver.

12. Further, the Delhi High Court in the case of *Delhi Transport Corporation v. United India Insurance Company Limited*, MAC. APPs. 1081-1088-1089-1091-10921093-1094-313-1022 & 194/2017, held that as a public transport authority, DTC has a higher duty of care in verifying the genuineness of its drivers' licenses. Being a statutory undertaking, DTC is expected to exercise due caution and care in verifying documents submitted by potential employees. A Public Transport Undertaking is not expected to unleash untrained, incompetent and unlicensed drivers upon the unsuspecting innocent public.

13. In the case of *United India Insurance Co. Ltd. vs. Anil Kumar and Ors.*, 2019 SCC OnLine Del 12181, it was held that, following the principles laid down in *Pepsu (supra)*, if a vehicle owner finds the driving license valid on face value and has satisfactorily tested the driver's skills before employment, they would be covered for liability against Claims.

14. In the present case, DTC had taken appropriate steps in verifying the driver's credentials and had exercised due care. DTC had not only conducted the necessary verification by ensuring that the driver underwent the requisite driving skill test but had also taken the photocopy of the Driving License and had even got the same verified. The Report which had come initially was that the DL was genuine, and there is no evidence brought on record to show that the DTC had procured this Report or that it had failed to take any due care or caution at the time of appointment of

Respondent No.5/Anil Kumar as the driver. There was no reason for the DTC to even expect a fake report in regard to the DL of the Driver, at the time of initial appointment. Though subsequent to the accident, the Witness from the Agra Transport Authority has reported that the DL was not issued by their Authority, but the DTC cannot be faulted for initial incorrect report. There was nothing on record to prove that DTC was aware that the original license presented by the driver was a fake. It had exercised due care and caution while employing the Driver.

15. Therefore, the recovery rights against DTC could not have been granted. **The Impugned Order is set aside to the extent of granting recovery rights against DTC.**

16. The Appeal is partly allowed and is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 6, 2024
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