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

% **Judgment reserved on : 16 February 2024**
Judgment pronounced on : 08 April 2024

+ **MAC.APP. 996/2015**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

KAMLA & ORS Respondents
Through: Mr. S.N. Parashar, Adv. for R-1 to R-7.

+ **MAC.APP. 955/2017**

ANKUR BERI Appellant
Through: Mr. Atul Sharma, Adv.

Versus

THE INDIA ASSURANCE CO LTD & ORS..... Respondents
Through: Mr. Pankaj Seth, Adv.

+ **MAC.APP. 894/2018**

KAMLA & ORS Appellants
Through: Mr. S.N. Parashar, Adv.

versus

THE NEW INDIA ASSURANCE CO LTD & ORS Respondents
Through: Mr. Pankaj Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA



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JUDGMENT

1. This common judgment shall decide the above noted three appeals preferred by the contesting parties under section 173 of the Motor Vehicles Act, 1988, which arise out of the impugned judgment-cum-award dated 16.11.2015 passed by the by the learned Presiding Officer, Motor Accident Claims Tribunal, Shahdara, Karkardooma, Delhi¹ in MAC Petition No. 94/2012 titled as 'Kamla & Ors. v. Deva & Ors.' The issues raised by the parties would be spelled out hereinafter. All the issues can be conveniently disposed of together as they involve common question of law and facts.

2. Shorn of unnecessary details, it is admitted case that the deceased Chandrapal, who was 51 years of age, was driving his Scooty on 12.04.2012, when he received fatal injuries in a motor accident involving the offending Dumper bearing registration No. HR-55F-2644² registered in the name of Ankur Beri/ respondent No.3 in main claim petition, and evidently insured for third party risks with the appellant Insurance Company in MAC APP. 996/2017.

3. A claim petition under Sections 166 read with Section 140 of the Motor Vehicles Act, 1988³ was filed by the claimants *viz.*, widow, two sons and four daughters of the deceased seeking compensation, in which respondent No. 2/Deva was arraigned as Driver and respondent No.3/Ankur Beri was arraigned as the registered owner of the offending vehicle, who are respondents No. 8 & 9 respectively in the instant appeals.

¹ Tribunal

² Offending vehicle



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4. Insofar as the issue whether the deceased Chandrapal suffered fatal injuries in the accident on 12.04.2012 due to rash and negligent driving of the offending vehicle is concerned, the same is not agitated by the appellant/insurance company in MAC APP. 996/2015.

5. However, learned counsel for the appellant/ insurance company has assailed the quantum of compensation of Rs. 10,68,285/- with interest @ 12% from the date of filing of the petition till realization awarded to the claimants on the grounds that except for the widow, the children were adult and financially independent, and therefore, the deduction towards personal use and consumption from the notional annual income should have been one-half instead of one-third besides the learned Tribunal having granted exaggerated and mindless compensation of Rs. 3,50,000/- towards love and affection, Rs. 50,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses.

6. The impugned judgment-cum-award is also assailed by the appellant/insurance company on the ground that the initial driving license of the respondent No.1 (respondent No.8 in the present appeal) issued by the Transport Authority, Mall Road, Delhi was fake, and therefore, its subsequent renewal by different Regional Transport Authorities was *non est* in law, and therefore, the appellant/insurance company should not have been fastened with the liability to pay compensation to the claimants at the first instance. In other words, although recovery rights have been given against the driver and the

³ MV Act



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owner of the offending vehicle, the insurance company has no primary responsibility to pay compensation to the claimants.

7. The claimants/appellants on the other hand in MAC APP. 894/2018 seek enhanced compensation *inter alia* asserting that the deceased was gainfully self-employed earning about Rs. 50,000/- per month and in any case, since he was residing and working for gain in Ghaziabad within National Capital Territory region, the minimum wages should have been reckoned @ Rs. 8528/- per month.

8. The appellant/Ankur Beri i.e. the registered owner in MAC APP 955/2017, assails the impugned judgment-cum-award to the extent that the recovery rights have been granted to the insurer against him as well as the driver of the offending vehicle.

ANALYSIS AND DECISION:

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

“23. The insurance company has examined three witnesses. R3W1 Bijender Singh stated that he is on the panel of insurance company as an investigator. He was deputed to investigate the driving licence no. TR-7169-BSR dt. 30.05.2002 issued in the name of Deva s/o Sh. Soran Singh which was renewed on 30.05.2002, 30.05.2005, 30.05.2008 and 30.05.2011 on the basis of original driving licence no. C- 93070266 dt. 12.02.1987 issued by Licencing Authority, Rajpur Road. The licencing authority, Bulandshahar has confirmed it on form no. 54, Ex.R3W1/A. His report is Ex.R3W1/B. Ex.R3W1/C is the licence of Deva verified by him. He has also approached Licencing Authority, Rajpur Road and filed an application dt. 18.12.2012 Ex.R3W1/D. Ex.R3W1/E is his report with respect to the driving licence no. C-93070266. He has approached PIO/MLO, Licencing Authority, Mal Road under RTI Act to provide particulars of the licence no. C-93070266 vide



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application Ex.R3W1/F. The application was sent by post and postal receipts are Ex.R3W1/G. He did not receive any reply so he filed an appeal Ex.R3W1/H. The postal receipt is Ex.R3W1/I. He gave his report Ex.R3W1/J to the company. He has not received any confirmation about the licence from MLO, Rajpur Road, Delhi.

24. R3W2 Sunil Verma stated that he has brought the computerized policy no. 32160031110100000309 Ex.R3W2/1 of vehicle no. HR-55F-2644. The investigator has filed his report along with the report of MLO, Mal road, Delhi that driving licence no. C-93070266 was issued in the name of Sh. R.D. Sharma. The report was received in response to the appeal filed by the investigator. Ex.R3W2/2 is the report of investigator. Ex.R3W2/3 is the letter dt. 26.06.2014 issued by the investigator with respect to the verification of the driving licence. Ex.R3W2/4 is the letter dt. 18.06.2014 issued by MLO, Mall Road, Delhi showing the licence no. and name of the licence holder.

25. R3W3 Satish Chander, Record Clerk, RTO, Mall Road, Delhi stated that he has brought the summoned record with respect to driving licence no. C-93070266. The said licence was issued on 06.07.1993 in the name of Sh. R.D. Sharma which was valid till 05.07.1996. The copy of the record is Ex.R3W3/1. Ex.R3W3/2 is the letter dt. 12.11.2014 issued by MLO in the name of the court. The licence no. C-93070266 was not issued to Deva S/o Soran Singh.

26. Ld. Counsel for R3 submitted that no driving licence was issued to respondent no. 1 by Motor Licencing Authority, Mal Road, Delhi and driving licence of respondent no. 1 is fake so therefore subsequent endorsement for heavy vehicle and renewal by Licencing Authority Bulandshar does not make it a valid driving licence.

27. Heard and perused the record, Ex.R3W1/C is the driving licence of respondent no. 1 which was issued on the basis of driving licence no. C-93070266 issued by MLO, Mall Road, Delhi. Report Ex.R3W1/A and letter Ex.R3W1/B of R3W1 clearly shows that DL Ex.R3W1/C is duly issued by Licencing Authority, Bulandshahar. R3W1 filed an application Ex.R3W1/D before MLO, Mal Road, Delhi to provide details of DL no. C-93070266 but the particulars were not provided as apparent from report Ex.R3W1/E of R3W1. R3W1 filed an application Ex.R3W1/F before MLO / PIO under RTI Act to provide the details of DL no. C-93070266 but no particulars were provided and thereafter appeal Ex.R3W1/H was filed by R3W1. A reply was received by R3W1 from MLO, Mal Road, Delhi that the licence no. C-93070266 dt. 06.07.1993 which was valid till 06.07.1999 was issued for LMV



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purposes in the name of Sh. R.D. Ram which is valid upto 06.07.1999. This is also clear from report Ex.R3W2/4 of MLO, Mal Road, Delhi. The copy of Licence issued in the name of Sh. R.D. Ram is Ex.R3W3/1. MLO, Mal Road has also given an information Ex.R3W3/2 to the court through letter address to the court that licence no. C-93070266 is issued in the name of Sh. R.D. Ram for LMV purposes.

28. It is clear from the entire evidence on record that license no. C-93070266 was not issued in the name of respondent no. 1. No licence was issued in the name of respondent no. 1 by MLO, Mal Road, Delhi. Licence Ex.R3W1/C was issued by Licencing Authority, Bulandshahar on the basis of Licence no. C-93070266 as said endorsement finds reflection on the top of the licence. The basis of licence Ex.R3W1/C is the existence of earlier licence bearing no. C-93070266. No licence with the number C-93070266 exist in the favour of respondent no. 1. The number of licence given by respondent no. 1 to Licence Authority, Bulandshahar was not of the licence issued in his favour. The respondent no. 1 has given the number of licence of some other person as a result Licencing Authority issued the fresh driving licence with the addition of HMV (P). No driving licence existed in favour of respondent no. 1. The particulars given by respondent no. 1 were not his particulars. He has used the particulars of some other person. Section 15 of the MV Act only empowers any Licencing Authority to renew a driving licence under the provisions of this Act w.e.f. expiry of licence but he has no power to renew or issue licence on the basis of fake particulars. The particulars given by respondent no. 1 are fake and fake particulars do not become original on account of renewal or issuance of fresh licence by the Licencing Authority without knowing it to be forged. The licence Ex.R3W1/C is a forged licence. Support is drawn from **National Insurance Co. Ltd. vs Laxmi Narayan Dutt, MANU SC/1233/1207 and New India Assurance Co. Shimla vs Kamla and ors, MANU SC/0202/2001.**

29. There is nothing on the record that respondent no. 2 was aware of any forgery in obtaining the licence is committed by respondent no. 1.

30. The vehicle in question is duly insured with insurance company. The insurance company is liable to pay compensation to the third party even if there is some breach in the terms and conditions of the policy. The insurance company shall pay the compensation to the petitioners and thereafter can recover the same from the respondent no. 1 and 2 i.e. driver and owner.”



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10. On a careful perusal of the aforesaid reasoning, what is brought to the fore is that as per testimony of R3W3 Record Clerk examined from Regional Transport Authority⁴, Mall Road, apparently the original driving license issued on 06.07.1993 was in the name of one R.D. Sharma valid till 05.07.1996 and it was not issued to respondent No.8 i.e. the driver, Deva. However, it is also evident that in terms of the report Ex.R3W-1/B and R3W-1/C by the Licensing Authority, Bulandsaher, Uttar Pradesh, the driving license had been re-issued/ renewed in the name of respondent No.8/driver Deva on 30.05.202, 30.05.2005, 30.05.2008 and lastly on 30.05.2011.

11. Indeed, the plea of the insurance company that fraud would vitiate everything and since the original license was an incurable nullity, which was evidently the foundation of its renewals, and thereby, the subsequent renewal of which is also *non est* in law. However, unhesitatingly, the learned Tribunal committed grave jurisdictional error in holding that the respondent No.2/ registered owner⁵ was unaware of the forgery committed by his employee/driver Deva in obtaining the license, and wrongly granted the recovery rights to the insurer.

12. Undoubtedly, the possession of a valid driving licence by the driver of the offending/insured vehicle is the fundamental requirement of law to be proven in accordance with provisions of this Act. However, assuming for the sake of convenience, that there was an issue regarding the validity of the driving licence, the

⁴ RTO

⁵ Appellant in MAC APP. 955/2017



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appellant/Insurance Company cannot be granted the recovery rights in view of the decision in the case of **Rishi Pal Singh v. New India Assurance Co. Ltd.**⁶ wherein, although the driving licence of the driver of the offending vehicle had not been found to be 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 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.”

13. In the above cited case, the Supreme Court has referred to the decision in **United India Insurance Co. Ltd. v. Lehu**⁷ and to a three judge’s bench judgment in **National Insurance Co. Ltd. v. Swaran Singh**⁸. 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**⁹ 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

⁶ 2022 SCC OnLine SC 2119

⁷ (2003) 3 SCC 338

⁸ (2004) 3 SCC 297

⁹ (2001) 4 SCC 342



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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 Lehru [(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 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.**"
(bold portions emphasized)

14. The decision in **Pappu v. Vinod Kumar Lamba**¹⁰ 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

¹⁰ (2018) 3 SCC 208



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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 (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.**”

(bold portions emphasized)

15. Therefore, what follows is that the owner of a vehicle is obligated to examine the driving licence of his employee/driver and verify the driving skills but there is no legal mandate that he should 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 Ex. R-3/W1/C 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



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driving licence of the latter was a fake. In the absence of any tangible evidence that the respondent No. 8/ Deva 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.

16. In view of foregoing discussion, the MAC APP. No. 955/2017 filed by the registered owner is hereby allowed. The judgment-cum-award dated 16.11.2015 is hereby partly set aside to the effect that the liability to pay compensation shall remain fastened upon the Insurance Company¹¹ and it shall have no recovery rights.

QUANTUM OF COMPENSATION:

17. In so far as the quantum of compensation is concerned, the deceased was 51 years of age and in the absence of claimants/legal heirs on record, any cogent and reliable documentary evidence, learned Tribunal rightly assessed the monthly income of the deceased at minimum wages for a skilled worker in State of Uttar Pradesh which was Rs. 5279/- per month, which comes to Rs. 68.748/- as the annual income. Although respondents No. 2 to 7 were adult persons and not financially dependent upon the deceased, there is no reason that deduction towards personal use and consumption should have been one-half instead of one-third, which was rightly adopted by the learned Tribunal. However, learned Tribunal failed to take into consideration the element of reckoning future prospects for the

¹¹ Appellant in MAC APP. 996/2015



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deceased as well and the deceased being self-employed it should have been 10% in terms of decision in the case of *Pranay Sethi*¹².

18. Having said that, there is another dimension that is of utmost significance. There is no gainsaying that the rate of minimum wages has no correlation with the age and experience and it would be fair to assume that the deceased would have been earning Rs. 10,000/- per month at the age of 51 years who otherwise had a huge family to support in his younger years. Therefore, loss of dependency would notionally should be worked out to be Rs. 10,000 x 12= Rs. 1,20,000/- + 10% i.e. 12,000/- = Rs. 1,32,000/- and on deduction of 1/3rd towards personal use and consumption, the loss of financial dependency would come to Rs. 88,000/- per year, to which multiplier of '9' shall be required to be adopted as per decision in the case of *Sarla Verma*¹³ and the figure comes to Rs.7,92,000/-.

19. Further, as per decision in the case of *Pranay Sethi* loss of consortium shall be Rs. 40,000/- to each of the dependents @ Rs. 40,000/- per head and that would come out to Rs.2,80,000/-, to which we will be adding Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses besides Rs.1,30,797/- towards medical bills and certificate which are Ex.PW-1/3 that were not controverted by the insurer. Hence, total compensation would works out to be :

S.No.	Name of Heads	Amount
1.	Loss of financial dependency	Rs.7,92,000/-
2.	Loss of consortium	Rs.2,80,000/-

¹² National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680

¹³ Sarla Verma v. DTC, (2009) 6 SCC 121



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3.	Loss of estate	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-
5.	Medical Expenses	Rs.1,30,797/-
Total		Rs. 12,32,797/-

20. Lastly, I also found merit in the plea of the insurer company that the award of interest @ 12% from the date of filing of petition till realization is on the higher side. The accident in the instant matter had occurred on 12.04.2012 and the petition was filed on 07.06.2012, which was decided in about three years of its institution and there are shown no compelling circumstances so as to justify grant of interest @ 12% per annum. This Court has taken a consistent view that ordinarily, rate of interest should be reckoned @ 7.5%, for which reference can be invited to decision in **The Oriental Insurance Co. Ltd. v. Sohan Lal**¹⁴.

21. In view of the foregoing discussion, while MAC. APP 996/2015 filed by the appellant/insurance company is hereby dismissed, the MAC. APP. 955/2017 filed by the appellant-registered owner Ankur Beri is partly allowed to the effect that the Insurance Company shall not be entitled to any recovery rights against the appellant/registered owner Ankur Beri. Lastly, MAC. APP. 894/2018 filed by the claimants/legal heirs is partly allowed to the effect that compensation is re-assessed and same is found to be claimable for Rs. 12,32,797/-, which shall be payable with interest @ 7.5 % from the date of filing of the petition till realization.

¹⁴ 2024 SCC OnLine Del 1966



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22. Lastly, the record bears out that an interim order was passed by this Court dated 21.05.2015, whereby 50% of the amount of compensation that was awarded by the learned Tribunal with accrued interest had been directed to be released to the claimants. The appellant/insurance company is directed to deposit the balance amount of compensation as per the enhanced compensation granted by this Court with accrued interest @ 7.5% from the date of filing petition till this date within four weeks from today with the learned Tribunal, failing which, it shall be liable to pay penal interest @ 9.5% from the date of this Judgment till realization. The amount of compensation with accrued interest on getting deposited by the insurer, shall be released to the claimants in terms of directions passed by the learned Tribunal.

23. The above-noted three appeals stand disposed of accordingly.

DHARMESH SHARMA, J.

April 08, 2024

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