In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.1060 of 2022
Reliance General Insurance Co. Ltd.
vs.
Prahallad Dutta @ Roni Dutta & Anr.
with
COT 100 of 2023
Prahallad Dutta @ Roni Dutta & Anr.
Vs.
Reliance General Insurance Co. Ltd.

Mr. Sanjay Paul
Ms. Jaita Ghosh
... for the appellant/insurance company.

Mr. Soujanya Bandyopadhyay
... for the respondent No.1 /claimant.

Heard on: January 6, 2025.

Judgment on: January 6, 2025.

Ananya Bandyopadhyay, J:-

The Learned Advocates representing the appellant/insurance company as well as respondent No.1/claimant are present.

The instant appeal had been filed against judgment and award dated 5th April, 2022 passed by the learned Judge, Motor Accident Claims Tribunal cum City Civil Court, Calcutta, in M.A.C. Case No. 318 of 2014.

An application under Section 166 of the Motor Vehicles Act had been filed by the respondent No.1/claimant on account of an accident which occurred on 14th August, 2014 at about 18.30 hours near Acharya Jagadish Ch. Bose Road, Moulali Yuva Kendra. The respondent No.1/victim was a passenger of the offending bus bearing Registration No. WB-04C-9380 which tried to overtake a Tram at a high speed and collided with the same, resulting in the injury of the left hand sustained by the victim claimant who was seated by the side of the window. A sudden jerk caused middle and lower loose window rods of the offending vehicle to clutch the left thumb and shoulder of the victim. The victim fractured his left thumb and sustained injury and was shifted to N.R.S. Medical College and Hospital, Kolkata primarily and subsequently admitted at Bhattacharya Orthopedics & Related Centre (P) Ltd on 18.08.2014.

The learned advocate representing the appellant/insurance company did not refute the amount of compensation granted by the learned Tribunal. However, objected to the fact of driving licence to have not been possessed by the driver of the offending vehicle on the relevant date.

The learned advocate representing the appellant/insurance company further stated that the appellant/insurance company should be exonerated from paying the compensation to the respondent No.1/claimant since the driving licence issued in favour of the driver of the offending vehicle expired on 6th May, 2014. From 6th May, 2014 till 25th September, 2014 the driving licence as aforesaid was not renewed. An application for renewal of the driving licence was submitted on 26th September, 2014. During the interregnum as aforesaid the driver of the offending vehicle did not possess the valid driving licence and he was not legally enabled to drive the offending vehicle, as such in absence of the same, the appellant/insurance company was not under any liability to pay the compensation amount. However, if at all the appellant/insurance company was to be directed to pay the compensation amount, the corresponding right to recover the same from the owner of the offending vehicle should be granted.

The learned advocate representing the appellant/insurance company did not confront or controvert the occurrence of the accident, the percentage of injury assessed by the Medical Board and other ancillary issues with regard to the computation of the compensation amount, following the guidelines of Hon'ble Supreme Court as enumerated in *National insurance company Ltd. Vs. Pranay Shetty & Anr*[1].

The learned advocate representing the appellant/insurance company further submitted that the multiplier in accordance with the age of the victim at the relevant time of the accident should have been considered as "18" instead of "19".

The learned advocate representing the respondent No.1/claimant acceded to the submission of the learned advocate representing the appellant/insurance company and submitted if the appellant/insurance company was granted to recover the computed amount of compensation from the respondent No. 2/owner, the respondent

---

1 **2017(4)TAC 673(S.C)**

No.1/claimant did not have any objection to the same. Since the dispute in the instant appeal is concerned only to the extent of the right of the appellant/insurance company to pay the compensation and thereafter, recover the same in absence of valid driving licence to have been possessed by the owner of the offending vehicle, this Court restricts itself only to the extent of addressing the issue as aforesaid.

D.W.1 during his examination-in-chief *inter alia* stated as follows:

" on the date of the occurrence of the accident on 14.08.2014 the driver concerned had no valid driving licence to drive the transport vehicle and/or passenger bus", relying on the document marked as Ext. B.

During his cross-examination the D.W.1 further stated "*one DL Renewal slip was tendered to the deponent and he was asked as to whether this document was issued from his department or not. He answered as follows:*

"I have no idea as to whether such sort of document was even issued from our department or not.

The said renewal slip was marked As "X" for identification. The document marked as Ext. B. revealed the DL Transcation history as well as valid copy of period in the following manner.

Validity Gap Period (if any)

Sl. No.	*Category*	*From Date*	*To Date*
1.	*NT*	*29.05.2009*	*07.03.2011*
2.	*TR*	*29.05.2009*	*07.03.2011*
3.	*TR*	*06.03.2014*	*25.09.2014*
4.	*TR*	*24.09.2017*	*14.01.2021*
DL Suspension/Cancelation/Blocking Detail (if any)			

The information in the aforesaid column revealed the driving licence to have not been issued or renewed from 06.03.2014 till 25th September, 2014. The document issued by the Transport Department Government of West Bengal is unimpeachable in nature. The learned Tribunal had considered the same.

The learned Tribunal in the impugned judgment *inter alia* observed as follows:

"*Ext.-B speaks that D/L to drive transport vehicle was issued in favour of the driver concerned on 30.12.1996 and the same was renewed from time to time even on 29.05.2009, 06.03.2014 then on 24.09.2017 and on 14.01.2021.*

Now, prior to amendment of 2019, as per S.14(2)(a), a driving license issued or renewed to drive transport vehicle would remain effective for three years and licence to drive transport vehicle carrying goods of dangerous and hazardous nature remains effective for a period of one year and if any person applies for renewal of driving licence within one month even after its expiry, the same was required to be renewed w.e.f. date of expiry. Now, if any driving licence is renewed on 06.03.2014, the same would be valid upto 05.03.2017.

So, even from Ext.-B it is appearing to be probable that the driver concerned had valid D/L to transport vehicle on 14.08.2014.

As per the judgment of Sarwan Singh report in AIR 2004 SC 1531 burden of proof that driver had no valid driving licence at the time of accident lies upon the insurer. Here, insurer could not bring any convincing to lead to accept its contention regarding D/L. So, here, since the insurer failed to discharge his burden to prove that the driving concerned had no valid licence.

Hence, this Court taking adverse interference against the insurer, is inclined to hold that driver of two wheelers had valid licence and hence, it is held that the injurer shall be liable to pay compensation as would be assessed hereinafter".

The learned Tribunal had observed that the burden of proof that the driver did not possess a valid driving licence at the time of the accident lay upon the insurer. Under such circumstances an order should have been pronounced in directing the appellant/insurance company to pay the compensation awarded and thereafter on proof of its contention that the valid driving licence was not possessed by the driver of the offending vehicle to recover the amount of compensation from the owner of the offending vehicle, under no circumstances, inference that the driver possessed the valid licence should have been presumed.

The Hon'ble Supreme Court held the following in *IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi*[2]

12. Thereafter, in National Insurance Co. Ltd. v. Swaran Singh, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the

[2] 2023 SCC OnLine SC 1398

proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

13. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed 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 company 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 would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru[4] was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:

'(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 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.

(vii) The question, as to whether the owner has taken reasonable care to 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.'

14. More recently, in Ram Chandra Singh v. Rajaram, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.

The Hon'ble Supreme Court held the following in *National Insurance Co. Ltd. v. Swaran Singh*[3]:-

Where the driver's licence is found to be fake

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 Lehru 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 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.*

xxx

(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

[3] (2004) 3 SCC 297

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.

xxx

(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 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.

(vii) The question, as to whether the owner has taken reasonable care to 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.

Considering the observations of the Hon'ble Apex Court in *National insurance company Ltd. Vs. Pranay Shetty & Anr*[4] *and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.*[5] the impugned award of Rs. 7,49,308/- is modified as follows:

Monthly Income	Rs. 3000/-
Annual Income	Rs. 36,000/-
	Rs. 14,400/-
Future Prospect to be added(40%)	Rs. 50,400/-
	x 18
Multiplier to be "18"	Rs.9,07,200/-
	X 40%
Disability (40%)	Rs. 3,62,880/-
Medical Expenses	Rs. 2,86,268/-
General Damages	Rs. 6,49,148/-
	Rs. 80,000/-
Entitlement	Rs. 7,29,148/-

After calculation the award comes to Rs. 7,29,148/-. The award shall carry 6% per cent per annum from the date of filing of the claim application i.e. 27.10.2014. It was further submitted by the Learned Advocate for the appellant/insurance company

4. 2017(4)TAC 673(S.C)

[5] (2009) 6 SC 121

that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.11,00,070/-. The same must have carried some interest.

The respondent No.1 /claimant is entitled to receive the balance amount of Rs. Rs. 7,29,148//- interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The Appellant/Insurance Company is to recover the same from the owner of the offending vehicle being respondent no. 2 on proper evidence that the driving license was invalid.

The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the same to the present respondent /claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum City Civil Court, Calcutta in M.A.C. Case No. 318 of 2014 on proof of proper identification of the respondent No.1/claimant subject to payment of *ad valorem* Courts fees and refund the differential amount through a cheque to the learned advocate representing the appellant/insurance company for the accounts of the insurance company.

The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which had already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta shall be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the respondent No.1 /claimant.

The instant appeal and COT are disposed of accordingly.

The interim order if any stand vacated.

The TCR be sent down to the concerned Tribunal forthwith.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)