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

*Date of Decision: 30.04.2025*

+ **MAC.APP. 45/2021**

**SURJEET SINGH**

.....Appellant

Through: Mr. S.N. Parashar & Mr. Ritik Singh,  
Advocates.

versus

**NATIONAL INS CO LTD & ORS.**

.....Respondents

Through: Ms. Khushi Sachdeva, Proxy Counsel

**CORAM:**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.: (Oral)**

**CM APPL. 2602/2021 [Delay in filing the Appeal]**

1. This is an Application seeking condonation of delay in filing the Appeal.

2. Learned Counsel for the Appellant submits that the judgment was passed ex-parte in the absence of the Applicant/Appellant and thus, he was unaware of the judgment dated 03.11.2018. It is further stated that the Appellant has a good case on merits because the vehicle was duly insured.

2.1 Learned Counsel for the Appellant submits that although, a Counsel was appointed before the learned Tribunal, the Counsel did not appear and thus, no defence of the Appellant could be placed on record. The Appellant only became aware of the proceedings when he received Notice of initiation of Execution proceedings in August, 2019.



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2.2 Although, a Reply has been filed on behalf of the Respondents objecting to the condonation of delay Application, learned Counsel for Respondent No.1, on instructions fairly submits that in the interest of expediency, they have no objection if the prayers in the present Application are allowed.

3. Accordingly, the Application is allowed and the delay is condoned.

4. The Application stands disposed of.

**MAC.APP. 45/2021, CM APPL. 2600/2021 [Additional evidence], 2601/2021 [Stay]**

5. Learned Counsel for the Appellant submits that he has a good case on merits.

6. It is the case of the Appellant that he was the owner of the vehicle involved in the accident.

7. The Appellant had engaged a Counsel who despite assurances that he would contest the case on behalf of the Appellant, did not lead any evidence before the learned Tribunal.

8. Learned Counsel for the Appellant submits that at the time of hiring the driver, Sh. Mumtaz/Respondent No.2, the Appellant had examined the original driving license and the driving skills of Respondent No.2 based on which the Appellant employed the Respondent No.2 as driver.

8.1 Learned Counsel for the Appellant further submits that the Appellant also had a valid and subsisting insurance policy.

9. It is contended by the learned Counsel for the Appellant that the obligation of an owner *qua* a driver would be limited as is set out in the



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judgments of the Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh & Ors.*<sup>1</sup> and *United India Insurance Co. Ltd. v. Lehu & Ors.*<sup>2</sup>

10. By the Judgment dated 03.11.2018 passed by learned Judge, MACT, Rohini Courts, New Delhi [hereafter referred to as the “Impugned Judgment”], the learned Tribunal has directed an award in the sum of Rs.5,08,000/- along with interest at the rate of 9% per annum in favour of the claimant/Respondent No.3. This finding has not been challenged by the Appellant. However, what has been challenged by the Appellant is the finding of the learned Tribunal that since the driving license as produced by the driver of the offending vehicle is a fake one, an adverse inference needs to be drawn, and thus, the Respondent No. 1/Insurance Company is initially liable to pay compensation and the Respondent No. 1 being the indemnifier can recover the money from the Appellant(owner of the vehicle). It is apposite to extract paragraph 40 of the Impugned Judgment in this behalf, which reads as follows:

*“LIABILITY*

*40. Now the liability is to be fixed as to which of the respondents shall pay the amount of compensation. **The offending vehicle was admittedly insured at the time of accident with respondent no. 3 i.e. National Insurance Company Ltd. Vide insurance policy no. 360500/31/0&/6300012034 (package policy) valid upto 18.02.2010. Respondent no. 1 & 2 did not lead any evidence. However, respondent no. 3 examined R3W1 Ms. Ritu Rani Aggarwal, Senior Assistant, RTO Office, Agra, U.P. who has brought the verification records of DL-2597/AG/06 (Ex. R3W1/1 Colly.). As per record, the driving license is issued in the name of one Sh. Pranjal Yadav s/o Sh. R. S. Yadav, R/o 9A, Sheel Vihar Colony, Khandari, Bypass Road, Agra, U.P and is not in the name of respondent no. 1, Mumtaz. Respondent no. 3/insurance company also examined Sh. Vineet, Assistant, National Insurance Company Ltd, as R3W2 who has proved the insurance policy of the***

<sup>1</sup> (2004) 3 SCC 297

<sup>2</sup> AIR 2003 SC 1292



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offending vehicle i.e. Truck bearing registration no. HR-55-G-7765 as R3W2/1, notice U/O XII rule 8 CPC whereby the respondent no. 3/insurance company has asked respondent no. 1 & 2 to produce the insurance policy of the offending vehicle, driving license of respondent no. 1 and other relevant documents of the offending vehicle as Ex. R3W2/2 and postal receipts as Ex. R3W2/3.

**It is argued by the Ld. Counsel for the respondent no. 3/insurance company on the aforementioned aspects that the respondent no. 1 was not holding driving license at the time of accident and even the driving license claimed by the respondent no. 1 to be its own (copy of which is lying in the judicial record) is fake one as the same stands in the name of some other person, therefore, recovery rights be given to the insurance company so that the insurance company can recover the awarded amount from them as initially the insurance company is bound to pay the compensation to the petitioner being indemnifier of the owner of the offending vehicle. In the present case, it is necessary to note that neither the driver nor the owner has come to depose in evidence and stayed away from the witness box. Even, the DL produced by the driver of the offending vehicle is fake one.** Notice under order XII Rule 8 CPC (Ex. R3WL/2) sent through postal receipt (Ex. R3WL/3) for production of original has not been replied to, leading to an adverse inference, In these circumstances, the insurance company is initially liable to pay the compensation to the petitioner being indemnifier of the owner and can recover the same from owner of the offending vehicle. Reliance is placed on civil appeal no. 2103 of 2018 titled Singh Ram Vs. Nirmala & Ors. decided on by Hon'ble Supreme Court on 06.03.2018.

*The issue is decided accordingly."*

[Emphasis Supplied]

11. The Supreme Court in **Lehru** case has discussed the aspect of obligation of an owner under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 [hereinafter referred to as "MV Act"] and has stated that the owner is required to check the driving license of the driver, and if on the face of it, the driving license looks genuine, the owner is not expected to find out that the license in fact has been issued by a competent authority or not. It has further been held that once the owner has satisfied himself that the driver has a license and is driving competently, there would be no breach of this sub-section. The Insurance Company would then not be absolved of its



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liability. The Supreme Court has further held that if ultimately the license turns out to be fake, the insurance company would continue to remain liable unless they were able to prove that the insured was aware of the fake license. The relevant extract of the *Lehru* case is below:

*“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia* [(1987) 2 SCC 654] , *Sohan Lal Passi* [(1996) 5 SCC 21 : 1996 SCC (Cri) 871] and *Kamla* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”*

[Emphasis Supplied]

12. This has been reiterated by the Supreme Court in *Swaran Singh* case. It was held by the Supreme Court that unless the Insurer can prove that the owner of the vehicle was guilty of negligence and failed to exercise due care while hiring a driver, an owner cannot be made liable. The relevant extract is below:

***“Summary of findings***

***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...

[Emphasis Supplied]

13. Given the fact that the Appellant was not allowed to represent his case before the learned Tribunal, this aspect of the matter was not brought to the notice of the learned Tribunal and thus was not adjudicated.

14. Accordingly, and in view of the law as settled in this behalf, this Court deems it apposite to direct that the remand of this matter limited only to the aspect of liability of the Appellant (owner of the vehicle).

14.1 The Appellant and the Insurance Company shall appear before the learned Tribunal on 21.05.2025.

14.2 Learned Counsel for the Appellant submits that he will not take any unnecessary adjournments before the learned Tribunal. The Appellant is bound down by the statement made by his counsel today.



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15. The Appeal is disposed of in the foregoing terms.
16. The parties shall act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**APRIL 30, 2025/ ha/jn**

*Click here to check corrigendum, if any*