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

+ **MAC.APP. 150/2020 & CM APPL. 9661/2020**

RAJBIR SINGH

.....Appellant

Through: Mr. Hitendra Kumar
Nahata & Mr. Puru
Chandvanshi, Advs.

versus

M/S NEW INDIA ASSURANCE CO LTDRespondent

Through: Mr. Sahil Paul, Mr. Ashish
Garg & Mr. Lalit Nagar,
Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

10.01.2025

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1. The present appeal is filed challenging the judgment dated 28.01.2020 (hereafter '**impugned judgment**'), passed by the learned Presiding Officer, Motor Accident Claims Tribunal, in MACT Case No. 396/2018, whereby it was held that the recovery rights granted in favour of the Insurance Company are not liable to be annulled.

2. The brief facts of the case are that on 28.07.2007, the victim sustained multiple injuries when she was struck by a tempo while crossing the road. Thereafter, the victim succumbed to her injuries. The offending vehicle is owned by the appellant and driven at the relevant time by the driver, namely, Mrityunjay.

3. A claim petition, being, Petition No. 43/09 (Old No. 494/07), was instituted by the legal heirs of the deceased victim. An award dated 25.09.2009 was passed in favour of the claimants and recovery rights were granted to the Insurance Company against the appellant and driver-Mrityunjay/ Respondent No.2.

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Recovery rights were granted to the Insurance Company on the ground that the driving license of Respondent No.2 was found to be fake. The relevant portion of the award dated 25.09.2009 in relation to the recovery rights is reproduced hereunder:

“67. Respondent number 3 has requested for recovery rights submitting that it is not liable to pay any amount as compensation to the petitioners as the driving licence of respondent number 1 is not valid. The fact that the vehicle was insured with the respondent number 3 is not in dispute. Therefore, respondent number 3 does not have any liability and respondent numbers 1 and 2 Is under the liability to make the payment.

68. Respondent number 3 has filed the verification reports of the driving licence of respondent number 1 to show that the same is fake. There is nothing on the record to indicate that the claim of respondent number 3 is wrong that the driving licence of respondent number 1 is fake.

69. The insurance company can be absolved of its liability only if it is established that there is deliberate breach of insurance policy on part of the insured. In the present case the respondent number 3 has successfully shown that there is any breach of any of the conditions of the insurance policy as the driving licence of respondent number 1 was valid on the date of accident. However, the respondent number 3 cannot be absolved of its liability to make the payment of compensation and it is also clear that it is entitled to recovery rights.

71. As this is a claim under the MV Act and respondents numbers 1, 2 and 3 are jointly and severally liable to make the payment of compensation, in such a situation respondent number 3 has the right to recover the amount from respondents numbers 1 and 2 by taking appropriate steps but it cannot be absolved of its legal duty of paying the compensation of the petitioners, who admittedly are the legal representative of the deceased and the dependent of the deceased in terms of Saria Verma's Judgment.”

(emphasis supplied)

4. The aforesaid claim petition was proceeded *ex parte* against the appellant and Respondent No.2. When recovery proceedings were initiated against the appellant by the Insurance Company, an application under Order IX Rule 13 of the Code of MAC.APP. 150/2020

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Civil Procedure, 1908 was preferred by the appellant on the pretext that no notice of the claim petition was ever issued and served upon him.

5. The said application was allowed by the order dated 09.05.2018, passed in Ex no.60855/16 and Suit No.43/09, and the award dated 25.09.2009 was set aside to the limited extent of the recovery rights granted in favour of the Insurance Company against the appellant and was heard afresh.

6. The learned Tribunal, by the impugned judgment, held that the petitioner did not exercise due care and diligence in verifying the driving license of Respondent No.2 (the driver) at the time of his employment and, therefore, the Insurance Company would be entitled to recover the awarded amount from him. It was noted that the appellant had admitted in his cross-examination that he had not verified the driving license of Respondent No.2 from the Transport Authority. It was further noted that while the appellant had maintained that he had verified the driving license of Respondent No.2 from the transport office where he was working, however, the name of the office had not been disclosed and no one had been summoned from the alleged office to prove the same.

7. The learned counsel for the appellant submits that the issue is no longer *res integra*. He submits that the Hon'ble Apex Court in ***Nirmala Kothari v. United India Insurance Co. Ltd. : (2020) 4 SCC 49*** had categorically held that the employer, while hiring the driver, is not expected to investigate into the authenticity of the license. He submits that the liability for the fake license in such circumstances cannot be fastened on the appellant, who is the owner of the offending vehicle.

8. He submits that the appellant had engaged Respondent
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No.2 after examination of his skills and he was not aware that Respondent No.2's license was fake. He further submits that the license of Respondent No.2 relates to West Bengal and the possibility of the appellant verifying the same was minimal.

9. The learned counsel for the Insurance Company submits that the impugned judgment suffers from no infirmity and the learned Tribunal has rightly appreciated that the appellant had admitted that he had not verified the driving license of Respondent No.2 from the Transport Authority.

10. He further submits that the appellant had also not disclosed the name of the transport office, where Respondent No.2 was earlier working, from which he had allegedly verified the driving license.

11. I have heard the counsel and perused the record.

12. The short question before this Court is whether recovery rights can be granted against the owner of an offending vehicle if the license of the driver, who was driving the offending vehicle at the time of the incident, is found to be fake.

13. The Hon'ble Apex Court in the case of ***Nirmala Kothari v. United India Insurance Co. Ltd.*** (*supra*), had adverted to a number of other judgments on the said issue and elaborated upon the extent of diligence expected from the owner of a vehicle while employing a driver. The relevant portion of the judgment is reproduced hereunder:

*“9. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed an invalid/fake driving licence. In **United India Insurance Co. Ltd. v. Lehu** [(2003) 3 SCC 338] a two-Judge Bench of this Court has taken the view that **the insurance company cannot be permitted to avoid its liability***



*on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the wilful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in **Pepsu RTC v. National Insurance Co.** [(2013) 10 SCC 217] . We may extract the relevant paragraph from the judgment :*

*‘10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. **Once such a defence is taken, the onus is on the insurer.** But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. **As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver.** However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] . **If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.**’*

*10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake, however, **the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of wilful breach of the conditions of the insurance policy or the contract of***



insurance lies on the insurer.

11. The view taken by the National Commission that the law as settled in Pepsu case is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in National Insurance Co. Ltd. v. Swaran Singh [(2004) 3 SCC 297

“110. ... (iii) ... 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)

12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.”

(emphasis supplied)

14. Relying upon the aforesaid judgment, a Coordinate Bench of this Court, in the case of ***Geeta Devi v. Kavita : 2023 SCC OnLine Del 2815***, in somewhat similar circumstances, had set aside the impugned award therein to the extent of grant of recovery rights by noting that the insurance company had not been able to prove that the appellant’s husband had taken no adequate steps to verify the genuineness of the concerned driving



license.

15. In the present case, it has been contended on behalf of the appellant that he had engaged Respondent No.2 to drive the tempo only after seeing his driving license and examining his skills for six months. It is submitted that the appellant was not aware that the license of Respondent No.2 was fake.

16. The relevant portion of the evidence tendered by the appellant by way of affidavit is reproduced hereunder:

“3. That the deponent is not liable to pay any compensation since the deponent had engaged the driver namely Mritunjay S/o Sh. Ganesh Sahu i.e. respondent No. 1 in the month of May, 2006 after exercise of due diligence, having seen the driving license presented by the driver with his own eyes and having satisfied as to his driving capability by taking test himself. The deponent after confirming the satisfactory and perfect driving of the respondent No. 1 continuously checked for six months and then permitted him to drive the above said vehicle independently. The deponent to check and confirm the driving of the respondent No. 1, accompanied him continuously for a period of six months on each and every trip by the vehicle of the deponent. The respondent No. 1 was a trained and qualified driver and only after checking and confirming the driving of respondent No. 1 continuously for a period of six months, he was permitted to drive the vehicle of the deponent independently....”

17. During cross-examination, the appellant reaffirmed the stance taken by him in his affidavit and stated that before employing Respondent No.2, he had inspected his driving license and also verified the same from the transport office where Respondent No.2 was earlier working, and he had tested Respondent No.2's driving by accompanying him for approximately 6 months. He also stated that he had not verified the license from the Transport Authority.

18. It is argued on behalf of the respondent insurance company that the appellant had failed to examine anyone from the transport office to show that he had verified the license of



Respondent No.2 and he had admittedly taken no steps to verify the license from the concerned Transport Authority, whereby, recovery rights have been rightly awarded against him.

19. As observed in *Nirmala Kothari v. United India Insurance Co. Ltd.* (*supra*), the onus to show that the owner/insured has not taken abundant care and caution to verify the genuineness of the license lies on the insurer. Only because the license of the driver was found to be fake, the same is insufficient to absolve the insurance company of its liability of indemnifying the owner of the offending vehicle.

20. It is not disputed that the insurance company led no evidence to establish that the appellant was aware or had reason to believe that the license of Respondent No.2 was fake. On the other hand, the appellant has categorically deposed that he had employed Respondent No.2 after having seen the driving license presented by Respondent No.2 and also having assessed his skills for approximately six months. Merely because the appellant did not verify the license from the concerned Transport Authority is not enough to raise an adverse inference against the appellant.

21. The appellant cannot be expected to conduct a thorough investigation into the license of the driver, especially since the appellant has stated that he took reasonable precaution by also assessing the skills of the driver. The testimony of the appellant cannot be discarded for want of corroboration in absence of any material having been brought forth by the insurance company to cast a doubt on the same.

22. In view of the aforesaid discussion, the impugned judgment is unsustainable and the same is set aside. Consequently, the respondent insurance company is held liable to indemnify the appellant.



23. The appeal stands allowed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

JANUARY 10, 2025
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