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

% ***Date of Decision: 17.07.2025***

+ **MAC.APP. 607/2019 & CM Appl.25787/2019**

SHRI RAM GEN INS CO LTDAppellant

Through: Mr. Mohd. Mustafa and Mr. Hitesh,
Advocates.

versus

RAMA SHANKAR & ANRRespondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. None appears for Respondents.
2. This Court had briefly examined the matter on 09.07.2025 and passed the following directions:

“1. The present Appeals have been filed on behalf of the Appellant under Section 173 of the Motor Vehicle Act, 1988 [hereinafter referred to as the “MV Act”] seeking to challenge the two awards, both dated 06.12.2018, passed by learned Presiding Officer, MACT-01, North, Rohini, Delhi.

2. In MAC.APP. 607/2019, the learned Tribunal has awarded compensation in the sum of Rs.14,671/- to the Respondent No.1/Claimant along with interest at the rate of 9% per annum.

2.1 In MAC.APP. 616/2019, the learned Tribunal has awarded compensation in the sum of Rs.20,44,000/- to the Respondent Nos.1 to 5/Claimants along with interest at the rate of 9% per annum.

3. Both the Appeals arise out of the same accident. The challenge of the Appellant in the Appeals is on two grounds. Firstly, that the driving license of the driver/owner was found to be fake after investigations were conducted by the Petitioner/Insurance Company during the pendency of the



trial. Secondly, that the defence of contributory negligence was taken by the Appellant before the learned Tribunal since the Appellant contends that the Respondent No.1/injured was travelling in a goods vehicle and sitting in the rear portion of the vehicle. However, it is contended that both these aspects were not correctly examined by the learned Tribunal.

4. So far as concerns the aspect of driving license being subsequently found to be fake, the issue is no longer res integra. The Supreme Court in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi and Ors.**; 2023 SCC OnLine SC 1398 while placing reliance on other cases, held that burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos a fake driving licence before employing that person to drive the vehicle and reference has to be made to facts of the given case. While relying on Section 149 of the MV Act, it was held that to avoid the liability, the insurance company must prove that the insured was guilty of negligence and failed to exercise reasonable care. The relevant extract of Geeta Devi case is set out below:

“4. It would be apposite at this stage to note the statutory milieu pertinent to this case. Section 149 of the Act of 1988, to the extent relevant, reads as under:—

‘149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

(1)

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings,.....; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i); or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or.....’

XXX

XXX

XXX

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. Lehu*¹ 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 *Lehu* (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.

¹ 2003 (3) SCC 338



(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.’ ”

5. The finding of the learned Tribunal is that the Appellant had failed to led any evidence or examine any witness in this behalf.

6. So far as concerns the aspect of contributory negligence, learned Counsel for the Appellant requests for an accommodation to make her arguments.”

[Emphasis Supplied]

3. As stated above, the matter was listed today for submissions on the aspect of contributory negligence. Today, learned Counsel for the Appellant clarifies that it is not a matter of contributory negligence, however the challenge is on the ground of gratuitous/unauthorised passenger in the vehicle.

4. Learned Counsel for the Appellant submits that the vehicle was a goods vehicle and the Deceased and the associates were travelling in the rear portion of the goods vehicle. Reliance is placed on the examination of R2W1/Mr. Shashank Awasthi, legal officer of the Appellant/ Insurance Company, in this behalf. Learned Counsel for the Appellant submits that the learned Trial Court has not correctly examined this plea.

5. Learned Counsel for the Appellant contends that the learned Trial Court failed to rely upon the testimony of their witness R2W1. The evidence



by way of Affidavit of the Insurance Company R2W1 only sets out that the vehicle was a goods vehicle and the Deceased were travelling in the rear portion of the goods vehicle without carrying any goods and thus, were gratuitous/unauthorised passengers in the vehicle. Thus, the insurance policy was breached. Paragraphs 5 and 6 of the Affidavit in this behalf are set out below:

“5. The deponent states that the vehicle bearing no. DL-1LQ-4974 in question is a goods vehicle and the deceased and injured was travelling in rear portion of the goods vehicle without having any goods at the time of accident. Therefore, the deceased and injured was Gratuitous/Unauthorized passenger in the vehicle.

6. The deponent states that there is breach and violation of the terms and conditions of the insurance policy by the respondent as such respondent no.2/insurance company is not liable to pay anything to the petitioners.”

[Emphasis supplied]

6. This Court does not agree. The examination of the Impugned Award shows that this aspect was discussed in detail by the learned Trial Court and a finding was given that the persons who are travelling in the in the offending vehicle were not gratuitous passengers but appointed by the company’s owner to get a submersible pump repaired. The submersible pump was recovered from the offending vehicle, which is goods carrying vehicle, and a seizure memo was also prepared by the IO on 20.03.2014 which forms part of the Trial Court Record.

7. The learned Trial Court also gave a finding that from the FIR and the statements given to the police at the time of the accident, the version of the accident as given by the Respondents/Claimants is corroborated. The relevant extract of the Impugned Award is below:

“19. I have perused the copy of FIR which was lodged on the statement of



petitioner. He clearly stated in his statement given to the police that he alongwith Mr. Rajnath, Mr. Santosh, Mr. Harinam (deceased) and Mr. Kartar Singh was going from Prahladpur to Bawana by travelling in the offending vehicle i.e. TSR goods carrying vehicle for getting the submersible pump repaired on the asking of company's owner. Seizure memo of submersible pump was also prepared by the 10 on 20.03.2014, which was recovered from the offending TSR itself. In the cross-examination PW2 stated that he alongwith one other passenger namely Harinam was sitting with the driver in the said vehicle and goods were of the company. Hence in view of the of abovesaid discussion, it is proved that the persons who were travelling in the offending vehicle were not gratuitous passengers as they were appointed by the owner of the submersible pump to get the same repaired which was being carried in the offending vehicle. As far as pleading of respondent no. 1 that the persons were sitting in his vehicle without permission is concerned, the same does not have any merit as injured was sitting with the goods in the TSR. Therefore, the contention of gratuitous passengers is neither proved by any of the plea taken by Respondent no.1. Respondent no.2 on the other hand has not been able to prove any fact by leading any positive evidence that the passengers were gratuitous passengers in the vehicle. Pleadings however strong it may be, cannot take the place of the proof. Further, as per copy of permit placed on record, the same was valid from 30.07.2012 to 27.07.2014 and as per copy of fitness certificate, the same was valid from 28.07.2012 to 27.07.2014. Hence, fitness certificate and permit were also valid at the time of accident.”

[Emphasis supplied]

7.1 The learned Trial Court examined the evidence given by Respondent No.1/Rama Shankar [PW-2] and based on this evidence, found that the persons who were travelling in the offending vehicle were not gratuitous passengers but were appointed by their employer to get a submersible pump repaired. They were travelling in the TSR Vehicle for this purpose. It was thus held that the contention of the Appellant/Insurance Company with regard to gratuitous passengers was not proved.

8. The review of the statement of the Respondent No.1 [PW-2] shows that the Respondent No.1 has averred that the offending vehicle was a commercial/goods vehicle. It is further stated therein that all persons were



not travelling in the rear portion of the vehicle but that PW-1 along with another passenger Hari Ram was sitting with the driver of the vehicle. It has further been averred that the driver of the offending vehicle was not driving at a normal speed but in a rash and negligent manner. The relevant extract of the cross-examination of PW-2 is set out below:

“...

It is correct that I sustained simple injuries in the accident and discharged from the hospital on the very same day. It is correct that I have not filed any document to show that I incurred Rs. 20,000/- on my medical treatment. Rs. 10,000/- on special diet and Rs. 5000/- towards conveyance. It is also correct that I have not filed any document to show that I could not work for about two months due to the said accident.

*The FIR was lodged on my statement. I do not remember the name of the IO who recorded my statement. It is correct that I was aware that the **offending vehicle was commercial / goods carrying vehicle**. It is incorrect to suggest that all the persons were travelling in the rear portion of the offending vehicle. **Vol. I along with one other passenger namely Hari Ram were sitting with the driver in the said vehicle**. It is correct that I have not mentioned in my affidavit Ex. PW2/A that I along with one other passenger namely Hari Ram were sitting with the driver in the said vehicle. It is wrong to suggest that the respondent no. **I was driving his vehicle at a normal speed at the time of accident and was not rash and negligent at that time**. It is correct that I no goods. Vol. The goods were of the company. I know the contents of my affidavit in which the number of offending vehicle is mentioned. It is wrong to say that I have filed false affidavit in evidence or that I am deposing falsely as interested witness.”*

[Emphasis supplied]

9. The learned Trial Court further found that it is not a disputed fact that the offending vehicle was insured with the Appellant. Thus, the Appellant/Insurance Company was found liable and consequently directed to pay compensation.

10. Learned Counsel for the Appellant other than referring the Court to the evidence of Respondent No.1/Claimant has not been able to show any document or testimony in support of his contention of contributory



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negligence.

11. The Appellant has also been unable to show any pleading or document on the record in support of his submissions or contentions.

12. In view of the foregoing discussions, the Appellant's challenge on the ground of gratuitous/unauthorised passenger in the vehicle is untenable and contrary to the established facts.

13. The only other ground of challenge in the present Appeal has already been dismissed in view of the settled law. The Appeal as filed by the Insurance Company is dismissed. Pending Application stands closed.

14. At this stage, learned Counsel for the Appellant submits that the statutory amounts as have been deposited before the Court are in addition to the awarded amount. Registry is directed to ascertain the same and in the event that the additional amount has been deposited, the Appellant is at liberty to file an appropriate Application for release of the same.

15. The Registry is also directed to send a copy of the judgment passed today by Registered A.D. to the Respondents.

16. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 17, 2025/r