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

\+ MAC.APP. 48/2021CM APPL. 2727/2021

THE ORIENTAL INSURANCE CO. LTD. .....Appellant

Through: Mr. Pradeep Gaur, Advocate (*through VC*)

versus

SMT. HIRA DEVI & ORS. .....Respondent

Through: Mr. Naveen Kumar, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

<u>O R D E R</u>

% **25.04.2026**

1. Matter could not be taken up on 03.03.2026 since it was declared Court Holiday in in view of notification No. 64/G-4/Genl.-I/DHC Dated: 27.02.2026.

2. *Mr. Pradeep Gaur*, counsel for Insurance Company, argues in favour of grant of recovery rights against the owner/respondent no.4.

3. The issue revolves around the alleged fake license of the driver of the vehicle/respondent no.3. The MACT has dealt with this issue in *paragraph 18* of the impugned judgement.

4. Essentially, pursuant to a notice sent to the DTO, Muzaffarpur, Bihar, **R3W1**, Ms. Neelam Rani gave her deposition and stated that the insurance company got the *DL no. 1886G106* was verified by the investigator, *Shri Rakesh Kumar*, appointed by the Insurance Company, which was annexed as

Exhibit ***R3W1/2***.

5. As per this verification report, the Driving License ('***DL***') bearing no.1886G/06 was not issued by the office of DTO, Muzaffarpur.

6. However, counsel for respondent no.4 contends that neither the investigator nor any official from the DTO, Muzaffarpur, was examined as a witness. On the contrary, DAR shows that the IO had verified the DL from *DTO, Sheohar*.

7. The Insurance company having failed to explain why its investigator could not be examined, counsel for respondent no.4 states that it was the duty of Insurance Company to bring evidence on record, specifically when **R3W1**'s testimony was incomplete and not determinative.

8. Reliance was placed by *Mr. Pradeep Gaur* on the decision in ***New India Assurance Co. v. Kamla*** (2001) 4 SCC 342, which states as under.

> "*25. The position can be summed up thus: The insurer and the insured are bound by the conditions enumerated in the policy, and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to*

the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

(emphasis added)

9. However, counsel for respondent no.4 cites decision of ***United India Insurance Co. Ltd. v. Lehru*** (2003) 3 SCC 338. wherein the decision in ***Kamla*** (*supra*) is stated to be incorrectly decided. The Supreme Court in ***Lehru*** (*supra*) has adumbrated on the issue of duty to verify the license of the driver, and to the extent of diligence it is expected to undertake. It effectively opines that the owner cannot be expected to make inquiries with RTOs, which are spread all over the country, to find out whether the driving licenses are valid or not, and if it turns out that the license was fake, the insurance company would continue to remain liable. Relevant paragraphs of the judgment are extracted as under:

"*16. In spite of the above enunciation of law the insurance companies still continue to disclaim liability on the ground that the licence was fake. In the case of New India Assurance Co. v. Kamla (2001) 4 SCC 342 the question was whether by virtue of Section 149(2)(a)(ii) an insurance company could avoid liability if it is proved that the driving licence was fake. This Court considered, in detail, Section 149 of the Motor Vehicles Act, 1988 and held that the insurer has to pay to third parties on account of the fact that a policy of* *insurance has been issued in respect of the vehicle. It is held that the insurer may be entitled to recover such sum from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the contract of insurance. The question as to whether or not the insured would be protected if he had made all enquiries was left open. However, this point has been squarely dealt with in Skandia (1987) 2 SCC 654 and Sohan Lal Passi (1996) 5 SCC 21 cases.*

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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, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.*"
>
> (emphasis added)

10. The Court has perused the record, and, in particular, the assessment by the Motor Accidents Claims Tribunal ('***MACT***') in *paragraphs 18.1 to 18.3*.

11. The MACT, categorically notes that while the Detailed Accident Report ('***DAR***'), exhibited as **Ex. PW1/5** before the MACT, shows that the driving license of the driver, respondent No. 3 *herein/Ajay Rai*, was seized by the police *vide* seizure memo dated 21st June 2014 during investigation of the FIR No. 409/2014, registered at PS North Rohini.

12. The DAR further shows that the said license was valid for Light Motor Vehicle ('***LMV***') and Heavy Goods Vehicle ('***HGV***'), issued on 8th June 2009 till 7th January 2015, and was verified by the IO from DTO Sheohar.

13. The MACT notes that the verification report shows that the old DL number of respondent no.1 *bearing no.1886G/06* from DTO Muzaffarpur, and the new *DL No. 50/09* was valid from 7th January 2012 to 7th January 2015.

14. **R3W1**, Ma. Neelam Rani, Assistant, stated that the investigator of the Insurance Company, in its report, dated 20th August 2018, exhibited as **Ex. R3W1/2**, had supplied their verification report with respect to *DL No. 1886G/06*, and as per the report, the said license has not been issued from the office.

15. In the cross-examination by counsel for the claimant, **R3W1** stated

that she had not personally visited the office of DTO, Muzaffarpur for verification of the license, but it had been done through the investigator. It is an admitted position that the investigator was neither produced as a witness nor examined before the MACT.

16. The MACT, therefore, rightly held that no reliance could be placed on the investigator's report, and instead relied upon the report contained in the DAR, which reflected verification by the IO from DTO, Sheohar, confirming that previous *DL-1886G/06* issued from DTO Muzaffarpur and new *DL-50/09*, had a validity period from 07th January 2012 to 07th January 2015.

17. Moreover, applying the principles enunciated in ***United India Insurance Co. Ltd. v. Lehru & Ors*** (2003) 3 SCC 338, the duty of the owner does not extend to the extent of verification of the licenses, particularly, when the driver is tested and is taken in employment.

18. *Mr. Naveen Kumar*, counsel for respondent no. 4, submits on instructions that the driver had been working with the owner for more than four years.

19. There is nothing on record to suggest that the owner was not diligent in this regard; however, it is noted that the owner was proceeded *ex parte* before the MACT and did not lead any evidence.

20. *Mr. Gaur*, also points out that the compensation towards *loss of love and affection* can no longer be granted, considering the principles enunciated in ***United India Insurance Company v. Satinder Kaur*** (2021) 11 SCC 780 and ***National Insurance Co. Ltd. vs Pranay Sethi*** (2017) 16 SCC 680; in view of these pronouncements by the Supreme Court, correcting these parameters, the compensation is reduced by Rs.1,00,000/-. Accordingly, the

recomputed compensation is *Rs.15,51,000/-*. For reference relevant paragraphs of ***Satinder Kaur*** (*supra*) are extracted as under:

> "*34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi, has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.*
> *35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.*"

(emphasis added)

21. *Vide* order dated 27th January 2021, this Court directed the appellant for deposit the entire compensation along with accrued interest and directed release of *75%* of the awarded amount along with interest @ *6%* per annum.

22. Accordingly, in view of the recomputed compensation, the balance amount shall continue to be released to the claimants. The amount that stands reduced along with accrued interest shall be refunded to the Insurance Company.

23. In view of the above, the appeal filed by the Insurance Company does not survive and is, accordingly, disposed of in terms of the above.

24. Statutory deposit (if any) be refunded to Insurance Company.

25. Pending applications (if any) are rendered infructuous.

26. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 25, 2026/RK/bp