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

% **Judgment reserved on: 10 April 2024**
Judgment pronounced on: 20 May 2024

\+ MAC.APP. 39/2022& CM APPL. 7486/2022

SANDEEP YADAV ..... Appellant
Through: Mr. Rajbir Singh, Advocate.

versus

NEW INDIA ASSURANCE CO. LTD. ..... Respondent
Through: Ms.Bhairavi SN, Advocate.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant, who is the registered owner of the vehicle, under Section 173 of the Motor Vehicles Act, 1988[1] assailing the impugned judgment-cum-award dated 17.02.2018 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, District Shahdara, Karkardooma Courts, New Delhi[2] in MAC No. 820/2016, whereby the learned Tribunal granted recovery rights to the respondent/Insurance Company to recover the awarded amount from the insured-owner.

FACTUAL BACKGROUND

2. Shorn of unnecessary details, on 07.11.2013, at about 10:00 PM, the deceased-Brajanand @ Birjoo was going by his bicycle and

[1]Act
[2]Tribunal

when he reached near Mayawati Bus Stand, Baghpat, U.P., suddenly a truck/tempo bearing No. DL-1M-5990[3] driven in a rash and negligent manner by Rajesh Kumar/respondent No.1, came at a high speed and hit the bicycle of the deceased. Consequently, the deceased sustained fatal injuries and was taken to the District hospital, but was declared brought dead. Subsequently, FIR No. 574/13 Criminal Complaint. No. 1065/13 was lodged against the respondent No.1/driver[4] with Police Station Baraut under Sections 279/304A/427 of the IPC[5].

3. The respondents No.1 and 2, who are the driver and registered owner[6] of the offending vehicle, were served but failed to contest the case and were proceeded *ex-parte vide* order dated 06.06.2014. *Per contra*, respondent No.3/Insurance Company denied all the allegations challenging the territorial jurisdiction of the Court as also the fact that the driver was not possessing a Driving Licence[7] to drive the vehicle. It was also contested that the offending vehicle did not have a valid permit and other relevant documents and thus, the insurance company is not liable to pay any amount.

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[3]offending vehicle

[4]Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

[5]Indian Penal Code, 1860

[6]Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

[7]Section 2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

4. Suffice to state that the learned Tribunal framed issue No.1 as to whether the deceased died due to rash and negligent driving of the offending vehicle by the respondent No.1, which was answered in favour of the claimants/legal heirs of the deceased. Further, on appreciation of the evidence led on the record, the claim petition was allowed and the claimants/legal heirs of the deceased were granted a total compensation of Rs. 16,14,000/- with interest @ 9% per annum from the date of filing of the petition till realization.

GROUNDS FOR APPEAL

5. The impugned judgment-cum-award has been assailed *inter alia* on the grounds that the onus is upon the insurance company/insurer to satisfy the court that there has been a violation of the insurance policy. Further, the respondent No.3/insurance company failed to prove that the licence was fake and also the fact that it was not issued by the concerned authority.

LEGAL SUBMISSIONS ADVANCED AT THE BAR

6. Learned counsel for the appellant/registered owner, challenging the grant of recovery rights to the insurance company, alludes to the aspect that once the driver has produced a licence, which appears to be genuine on the face of it, then the owner is not liable and, in this regard, reliance was placed upon the decision in the case of **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi**[8]. *Per contra*, learned counsel for the respondent/Insurance Company, relying upon

[8]2023 SCC OnLine SC 1398

United India Insurance Co. Ltd. v. Lehru[9], contested that the appellant/owner was aware of the fake licence possessed by the driver and still permitted him to drive the vehicle. Further, the registered owner never disputed the fact before the learned Tribunal that the driving licence was fake.

ANALYSIS & DECISION:

7. Having heard the learned counsels for the parties and on perusal of the record, unhesitatingly, the decision by the learned Tribunal *qua* the grant of recovery rights as against the present appellant/registered owner of the offending vehicle, cannot be sustained in law. It would be apposite to refer to the observations made by the learned Tribunal while granting the recovery rights to the Insurance Company, which reads as under: -

> "14. Respondent No.3 has admitted that the offending vehicle was insured with the Respondent No.3 in favour of Resp. No.2 on the day of accident but if the vehicle was insured and accident took place due to rash and negligent driving of the driver, then the insurance company is bound by the third-party clause to compensate the claim arising out of the accident pertaining to the offending vehicle. However, Respondent No.3 has argued that it is a case of violation of terms of insurance policy as Respondent No.1 was not holding a valid DL due to Respondent No.3 is liable to pay this compensation. This argument has not been opposed by the Respondents No.1 & 2. Though Respondents No.1 and 2 were ex-parte, yet they have cross examined R3W1 and also produced all the documents before the court in response of the notice u/o 12 rule 8 CPC, but still the DL was not produced before the court by either of the Respondents. On the other hand, R3W2 Ravi Karan Singh has produced the record of D L of the Respondent No.1 which is Ex.R3W2/A and has proved that the D L was never issued by the RTO Mainpuri, UP and this fact has not been

[9](2003) 3 SCC 338

> disputed by the R1 as well. As such, it stands proved that it was a case of violation of DL. On the other hand, Respondent No.1 has also not disputed this fact and remained ex-parte. As such it is a case of violation of insurance policy.

8. The aforesaid findings are absolutely perverse and unsustainable in law. To prove the violation of the terms and conditions of the policy of insurance, the respondent/insurance company examined R3W1 and although the appellant/registered owner and the driver were proceeded *ex parte*, the said witness was cross-examined by their counsel, which reads as under:-

> "XXXX by Sh. Deepak Kumar, proxy counsel for R1 and R2 though ex-parte.
> The documents were not earlier supplied. It is correct that it is recorded in the notices that documents have to be produced in the court. I have received photocopy of RC, insurance policy, permit, fitness, local permit, driving license and road tax receipt from the owner of the vehicle today in the court and I have seen the original except the driving license."

9. Now, as per the testimony of R3W1, the driving license of the driver was indeed verified from the RTO[10], Mainpuri, Uttar Pradesh but the same was bogus. Nonetheless, the plea taken by the learned counsel for the appellant that on being served with the notice under Order XII Rule 8 of the CPC, he had submitted the photocopies of all the documents including the photocopy of the driving license is clearly made out from the aforesaid reading of the cross-examination.

10. The plea taken by the learned counsel for the appellant that he did whatever was in his control and he had produced the driving

[10]Regional Transport Office

license but was unable to produce the driver as he had no control over him, cannot be brushed aside. There is no evidence led by the respondent/insurance company that the appellant, being the registered owner, was aware that the driving license of the respondent No.1/driver (in the original claim petition) was forged and fabricated. Further, there is no evidence on the record with respect to the fact that the appellant/owner, despite knowing that such driving license was fake and fabricated, allowed the respondent No.1/driver to drive the offending vehicle. The respondent/insurance company was duty bound to lead evidence on the aspect that the appellant was aware that such driving license was fake and yet, he chose to handover the control of the offending vehicle to his driver. In all probabilities, the appellant *bonafidely* believed the driving license to be genuine.

11. It is well settled that the registered owner is not supposed to rush to the respective RTO and ascertain the genuineness of the driving license produced by the driver. The driver had probably been driving the offending vehicle for a long time to the satisfaction of the appellant/owner. The insurance company could have also summoned and examined the registered owner to prove its defence, which it did not do. In this regard, reliance can be placed on a decision in the case of **United India Insurance Co. Ltd. v. Lehru (supra),**wherein it has been observed as under: -

> "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 2: 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."

12. In view of the foregoing discussion, the present appeal is allowed and the impugned judgment-cum-award dated 17.02.2018 passed by the learned Tribunal *qua* the grant of recovery rights to the respondent/insurance company against the appellant/registered owner, is hereby set aside. However, the respondent/insurance company shall be at liberty to proceed for recovery of the amount of compensation paid to the claimants/legal heirs of the deceased from the driver of the offending vehicle in accordance with law.

13. The present appeal, along with the pending application, stands disposed of accordingly.

DHARMESH SHARMA, J.

MAY 20, 2024
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