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

% Reserve on : 6th March, 2012
Date of decision : 30th March, 2012

\+ **MAC.APP. 170/2007**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Pradeep Gaur,
Mr. Amit Gaur and
Mr. Shashank, Advs.

Versus

PUSHPA DEVI AGGRAWAL AND ORS. ..... Respondents
Through : None.

\+ **MAC.APP. 592/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Pradeep Gaur,
Mr. Amit Gaur and
Mr. Shashank, Advs.

Versus

RUCHIKA SABOO AND ORS. ..... Respondents
Through : None.

\+ **MAC.APP. 593/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Pradeep Gaur,
Mr. Amit Gaur and
Mr. Shashank, Advs.

Versus

PUSHPA DEVI AGGARWAL AND ORS. ..... Respondents
Through : None.

\+ **MAC.APP. 596/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Pradeep Gaur,
Mr. Amit Gaur and
Mr. Shashank, Advs.

Versus

KANIKA SABOO AND ORS. ..... Respondents
Through : None.

+ MAC.APP. 598/2008

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Pradeep Gaur,
Mr. Amit Gaur and
Mr. Shashank, Advs.

Versus

AKANKSHA AND ORS. ..... Respondents
Through : None.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The accident dated 12th June, 2003 resulted in the death of Onkar Mal Aggarwal and injuries to Akansha Sarda, Kanika and Ruchika Saboo. The deceased along with aforesaid three injured persons were traveling in a Honda City car bearing No.DL-8C B-9368 while returning from Rishikesh to Delhi. The said car met with an accident with truck bearing No.UP-12D-9644 near Mansurpur. The offending vehicle was driven by respondent No.10, owned by respondent No.11 and insured by the appellant at the time of the accident. Five claim petitions were filed against the owner, driver and insurer of the offending vehicle. The Claims Tribunal allowed all the claim petitions and directed the appellant to deposit the award

amount. However, on account of violation of the policy with respect to the driving licence, the Claims Tribunal granted recovery rights to the appellant to recover the award amount from the owner and driver of the offending vehicle.

2. The appellant has challenged the award of the Claims Tribunal on the limited ground that the appellant is not liable to pay the award amount to the claimants and, therefore, the award should have been passed against the owner and driver of the offending vehicle. It is submitted that the driver of the offending vehicle was holding a driving licence by which he was authorized to drive motorcycle and light motor vehicles whereas he was driving a truck and, therefore, the appellant is not at all liable.

3. The findings of the Claims Tribunal in para 37 of the award dated 18th December, 2006 in MAC.APP.No.170/2007 are reproduced hereunder:-

> "37. As per the terms and condition of insurance policy the vehicle must be driven by a person holding valid driving licence. The driver was holding driving licence but the said driving licence was not valid for driving heavy motor vehicle i.e. truck. The insurance policy provides that a person or class of person entitled to drive are that any person including insure : provided that a person driving holds an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence. Therefore, there was breach of essential condition of the insurance policy. The

word ‘effective driving licence’ means a licence to drive a particular type of vehicle. Despite notice neither the driver nor the insured had produced the driving licence and the driving licence which was on the record was found to be not valid on the date of accident for which it was being used, thereby, there is breach of essential condition of the policy on part of the owner, therefore, adverse inference has to be drawn against the owner as he knew that the driver was not holding driving licence to drive HTV and thereby deliberately committed breach of conditions of the insurance policy. However, as per the law laid down in **National Insurance Company Ltd. v. Swaran Singh & Ors. 2004 ACJ – 1** the insurance company is liable to pay to the third party and then shall be entitled to recover the amount.”

4. The findings of the Claims Tribunal in the award dated 2nd September, 2008 in MAC.APP.Nos.592/2008, 593/2008, 596/2008 and 598/2008 are reproduced hereunder:-

> “69. Counsel for the Insurance Company has stated that Insurance Company is not liable to pay compensation in this case since the driving licence of driver of the offending vehicle was not valid as on the date of accident.
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> As per statement of R1W1 Harish Chand, Assistant Manager, National Insurance Company, he stated that the driving licence of driver of the offending vehicle, i.e, Dilshad Khan was not valid and effective at the time of accident. He stated that in a connected matter arisen out of the same FIR, i.e. Pushpa Devi Aggarwal vs. NIC in suit no.249/06, PS Mujaffar Nagar, UP, the Insurance Company has examined the concerned record clerk from the Transport Authority who had proved that the driving licence of driver of the offending vehicle was valid for motor cycle and motor car from 02/07/1998 to 01/07/2018.

In the cross examination, he has admitted that there is no report or verification that this driving licence was fake. I have gone through the certified copy of statement of Vikas Gaur, concerned Licence Clerk, ARTO, UP who has been examined as R3W2 in the connected matter mentioned above. As per the same, it is clearly mentioned that the driver of the offending vehicle, Dilshad Khan was holding a valid driving licence for driving motor cycle and motor car valid from 02/07/1998 to 01/07/2018. The endorsement for transport vehicle was made on 05/06/2006 whereas the accident in this case had taken place much prior to that, i.e. on 20/06/2003. Respondent no.3, who is driver of the offending vehicle was found driving the offending vehicle i.e. truck bearing registration no.UP 12 D 9644 in a rash and negligent manner. Therefore, in view of the Judgment of **National Insurance Company vs. Swaran Singh, 2004 (3) SCC 297** which has been discussed in **National Insurance Company vs. Kusum Rai and Others, (2006) 4 Supreme Court Cases 250**, a decision has to be taken as to whether the fact of driver possession licence for one type of vehicle but found driving another type of vehicle was the main and contributory cause of accident. In my opinion, having considered the overall facts and circumstances of the case, since the driver of the offending vehicle i.e. respondent no.3 had been driving the offending vehicle which was a commercial HTV vehicle i.e. truck in a rash and negligent manner and was also coming from the wrong side, it will lead the Tribunal to the conclusion that the driver of the offending vehicle was not trained to drive the HTV commercial vehicle and therefore that was the cause of the accident which had taken place in this case. I am, therefore, inclined to grant recovery rights to the Insurance Company who may take appropriate steps towards filing recovery proceedings against the driver and owner of the offending vehicle in all the four cases."

5. The appellant's contention that the Tribunal after concluding that the driver of the offending vehicle was not authorised to drive the vehicle involved in accident ought not to have asked the appellant to pay compensation and recover it from the owner, does not sound convincing. In order to provide immediate relief to the claimants, the Tribunal, even, where it finds that the insurer may escape the liability to pay the compensation, may ask the Insurance Company to pay compensation to the claimant and ask it to recover the compensation so paid from the insured. This practice has been consistently followed by the Motor Accident Claims Tribunals and even approved by the Supreme Court. If after a long drawn trial, the claimant is found entitled to compensation but not in a position to reap the fruits and forced to initiate proceedings against the owner of the offending vehicle and/or its driver, the very object of the Motor Vehicles Act would be frustrated.

6. In **National Insurance Co. Ltd. v. Swaran Singh, 2004 (3) SCC 297**, the three Judges Bench of the Apex Court held that in case of a third party claim, the insurance company has the statutory liability to satisfy the judgment in the first instance and then to recover the same from the owner and driver. The findings of the Apex Court are as under:-

"73. The liability of the insurer is a statutory one.

The liability of the insurer to satisfy the decree passed in favor of a third party is also statutory.
x x x

77. In *United Insurance Co. Ltd. v. Jaimy and Ors.* 1998 ACJ 1318 (Ker.) it is stated: (ACJ pp.1324-25, paras 19-22)

> "Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer in respect of any judgment or award. In the context it is proved that an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) as to under what circumstances this can be successfully recovered from the insured.
> Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned and it is precisely enacted in regard thereto that the liability covered by Section 2(b) as is required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person.
> In other words, section 149(4) considers the right of the insurance company in regard to re-imbursement of the amount paid by them only in the context of a situation other than the one contemplated under Section 149(2)(b). *It would mean that except under the situation provided*

by Section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations under section 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. *It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasize that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company."*

(Emphasis supplied)

x x x

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in

> negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defense but it is another thing to say that despite the fact that its defense has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.
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> x x x
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> **Conclusion**
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> 104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time."

7. In **United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338** which was noted in Swaran Singh (Supra) it was held that even in the case where a willful breach on the part of the insured is established, the Insurance Company would remain liable to the third parties. But, it may be able to recover the amount paid from the insured. The relevant findings of the Supreme Court are reproduced hereunder:-

> "20. When an owner is hiring a driver he will therefore have to check whether the driver was a driving license. If the driver produces a

> driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner should 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 license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149 (2) (a) (ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the license was fake, the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the license 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 Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654; Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; and New India Assurance Company Ltd. v. Kamla, (2001) 4 SCC 342. We are in full agreement with the views expressed therein and see no reason to take a different view."
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> ***(Emphasis supplied)***

8. Similar view was taken in **New India Assurance Co., Shimla v. Kamla, (2001) 4 SCC 342, Oriental Insurance Co. Ltd. v. Zaharulnisha, (2008) 12 SCC 385, National Insurance Company Limited v. Geeta Bhat, (2008) 12 SCC 426,** and **National Insurance Company Limited v.**

Laxmi Narain Dhut, (2007) 3 SCC 700.

9. In **National Insurance Company Limited v. Kusum Rai, (2006) 4 SCC 250**, the Supreme Court held that the Appellant Insurance Company was not liable to pay the compensation as the driver did not possess a valid driving license, yet exercising its jurisdiction under Article 136 of the Constitution of India, it directed the Appellant Insurance Company to pay the compensation and recover the amount from the owner of the vehicle.

10. In **Kusum Lata v. Satveer, (2011) 3 SCC 646**, the Apex Court has again put seal of approval on the principles laid down in Swaran Singh (supra). The Supreme Court has observed as under:-

> "13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the Insurance Company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three judge Bench of this Court in the case of National Insurance Company Limited v. Swaran Singh and ors reported in (2004) 3 SCC 297".

11. In view of the above discussion, this Court is of the opinion that the Claims Tribunal did not commit any illegality in directing the appellant to make deposit of the amount of compensation, and recover the same from the insured person,

i.e, the owner and driver of the offending vehicle. There is no merit in the appeals which are hereby dismissed. The statutory amount deposited by the appellants be refunded back.

12. Copy of this judgment be sent to the claimants.

J.R. MIDHA, J

MARCH 30, 2012