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

\+ MAC.APP. 256/2019, CM APPL. 7513/2019 & CM APPL. 7515/2019.

M/S UTTARANCHAL PEST CONTROL .....Appellant

Through: Mr. Ankit Kumar Vats, Adv.

versus

NAWAL SINGH & ORS(M/S ORIENTAL INSURANCE CO LTD) .....Respondent

Through: Mr. Janender Kumar Chumbak, Ms. Radhika and Ms. Soumya Mathur, Advs. for R-1 to 3.
Mr. J.P.N. Shahi, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **25.03.2026**

1. This appeal has been filed by appellant/owner of the offending vehicle challenging recovery rights, which have been granted by the Motor Accidents Claims Tribunal [‘***MACT***’], Saket Court in Suit No. 4086/2016, whereby compensation to the tune of *Rs.7,00,000/-*, alongwith interest at 9% was awarded to the claimants. Recovery rights have been granted on account that driving licence of respondent no.4/driver had not been produced by either respondent no.4/driver or appellant/owner of the offending vehicle.

2. The accident occurred on 9th October 2014, at about 07.00 pm, when *Smt. Rajwati*, (‘***deceased***’) was returning home from her duty at *NSG Manesar* by walking on the left side of the road. When she reached near in

Kalawati Hospital situated at *Delhi Jaipur Highway*, she was hit by one motorcycle bearing no. DL-3SCH-6103 coming from *Pachgoan Chowk* driven by respondent no.4/driver in a rash and negligent manner. The deceased sustained grievous injuries and was taken to Sunrise Hospital where she succumbed to her injuries. Claim petition was filed by her husband and sons ('***claimants***')

3. A defence had been raised by respondent no.5/Insurance Company that respondent no.4/driver of offending vehicle bearing registration no. *DL-3SCH-6103* was not holding a valid and effective driving licence and, therefore, there had been a violation of the Insurance Policy.

4. MACT had noted that a verification report had been requisitioned by counsel for respondent no.5/Insurance Company and the said verification report has been exhibited as ***Ex. R3W1/1***.

5. The Court has perused the said verification report and confirms that the driving licence had not been issued by the *Licensing Authority, Jind*, as stated in the driving licence, which had been produced later.

6. Moreover, appellant/owner had deposed that he had engaged respondent no.4/driver after looking at his driving licence; however, no driving licence was produced, nor was the driving license produced pursuant to notice under Order XII Rule 8 of Code of Civil Procedure, 1908 ('***CPC***').

7. In this light, *Mr. J.P.N. Shahi*, counsel for respondent no.5/Insurance Company states that absolutely no attempt has been made by appellant/owner to place the driving licence of respondent no.4/driver that he had engaged, on record, or to verify the same in any manner, or to make reasonable efforts to confirm that it was a valid driving licence. Therefore, the rights of recovery had been rightly granted.

8. *Mr. Ankit Kumar Vats*, counsel appearing on behalf of appellant/ owner, states that respondent no.4/driver had left the employment of appellant/owner after the accident and therefore, he was not in possession of the driving licence for it to be provided.

9. However, he states that he had seen the driving licence, but there was no occasion for him to verify or cross-check the same.

10. *Mr. Vats*, counsel for appellant/owner placed reliance upon the decision of the Supreme Court in ***United India Insurance Co. Ltd. v. Lehru***, (2003) 3 SCC 338 to state that while hiring a driver, the owner is not expected to find out whether the license has been issued by a competent authority or not. However, this decision may not aid the argument put forth by *Mr. Vats*, counsel for appellant/owner, as the issue dealt with by the Supreme Court in ***Lehru*** was of insurer's liability and the Supreme Court categorically stated that even if the driving license turns out to be fake, the Insurance Company would continue to be liable to innocent third party, but may be able to recover from the insured, if the owner/insured had noticed that the license was fake and permitted the driver to drive.

11. The duty of owner to reasonably verify the driver's license has been discussed in a catena of judgments.

12. A Three-Judge Bench of the Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh,*** (2004) 3 SCC 297 discussed the liability of insurer in cases of a fake or forged license. As regards the duty of owner to verify the genuineness of a driving license, the Supreme Court elaborated upon the decision in *Lehru (supra)* to hold that the defence of a fake driving license can be raised by the insurer after having proved that the owner did not take adequate care and precaution to verify the driving license. Duty of

an owner to make a reasonable enquiry would therefore, still stand. Relevant observations of the Court are extracted as under:

> *"**Where the driver's licence is found to be fake***
> ***92.** It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.*
> ***…***
> ***100.** This Court, however, in Lehru [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.*
> ***101.** The submission of Mr Salve that in Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] , this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such 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."*

13. Upholding the principle of '*pay and recover*', the Supreme Court in ***Swaran Singh*** held that even where the insurer succeeds in establishing a

statutory defence under Section 149(2) of the Motor Vehicles Act, 1988, the liability to satisfy the award *vis-à-vis* the third-party claimant subsists at first instance, with liberty reserved to the insurer to recover the amount from the insured/owner or driver of the offending vehicle. The Court, after an elaborate consideration of the statutory scheme and prior precedents, reaffirmed that the principle of '*pay and recover*' had consistently held the field and should not be unsettled. Emphasising the need for certainty in the law governing third-party rights, the Court observed as under*:*

> "*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.*
> *105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.*
> *106. It is a well-settled rule of law and should not ordinarily be deviated from. (See Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603] , SCR at pp. 630-32, Keshav Mills Co. Ltd. v. CIT [AIR 1965 SC 1636 : (1965) 2 SCR 908] , SCR at pp. 921-22, Union of India v. Raghubir Singh [(1989) 2 SCC 754 : (1989) 3 SCR 316] , SCR at pp. 323, 327, 334, Gannon Dunkerley and Co. v. State of Rajasthan [(1993) 1 SCC 364] , Belgaum Gardeners Coop. Production Supply and Sale Society Ltd. v. State of Karnataka [1993 Supp (1) SCC 96 (1)] and Hanumantappa Krishnappa Mantur v. State of Karnataka [1992 Supp (2) SCC 213 : 1992 SCC (Cri) 667].)*"

14. Reliance may also be placed upon the decision of the Supreme Court in ***National Insurance Co. Ltd. v. Geeta Bhat***, (2008) 12 SCC 426 where

the Supreme Court dealt with defences available to an insurer in cases of a fake driving license. While holding that the Insurance Company shall be liable towards third parties, liberty will be granted to recover the same from the driver and owner. The Supreme Court also went on to observe the duty of an owner to make a reasonable enquiry about the validity of a driving license. Relevant paragraph is extracted as under:

> "***7.*** *An owner of the vehicle is bound to make reasonable enquiry as to whether the person who is authorised to drive the vehicle holds a licence or not. Such a licence not only must be an effective one but should also be a valid one. It should be issued for driving a category of vehicle as specified in the Motor Vehicles Act and/or Rules framed thereunder."*
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> (emphasis added)

15. Burden on appellant/owner of onus to prove that they had engaged the driver after checking the driving license and believing that the appellant/owner had engaged the driver in good faith, was not discharged, as noted by the MACT. Reliance in this regard may be placed on the decision of this Court in ***New India Assurance Co. Ltd. v. Sanjay Kr. & Ors.*** 2007:DHC:315 where the Court noted that after the Insurance Company has established breach of terms of insurance policy, the onus is on the owner to prove before the MACT by either producing the driving license or showing lack of knowledge. Relevant observations of the Court are extracted as under:

> *"22. Thus, where the insurance company alleges that the term of the policy of not entrusting the vehicle to a person other than one possessing a valid driving licence has been violated, initial onus is on the insurance company to prove that the licence concerned was a fake licence or was not a*

valid driving licence. This onus is capable of being easily discharged by summoning the record of the Licencing Authority and in relation thereto proving whether at all the licence was issued by the authority concerned with reference to the licence produced by the driver. Once this is established, the onus shifts on to the assured i.e. the owner of the vehicle who must then step into the witness box and prove the circumstances under which he acted; circumstances being of proof that he acted bona fide and exercised due diligence and care. It would be enough for the owner to establish that he saw the driving licence of the driver when vehicle was entrusted to him and that the same appeared to be a genuine licence. It would be enough for the owner, to discharge the onus which has shifted on to his shoulders, to establish that he tested the driving skill of the driver and satisfied himself that the driver was fit to drive the vehicle. Law does not require the owner to personally go and verify the genuineness of the licence produced by the driver.

23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breached the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.

24. That apart, what more can the insurance company do other than to serve a notice under Order 12 Rule 8 of the Code of Civil Procedure calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company."

(emphasis added)

16. *Mr. J.P.N. Shahi*, counsel for Insurance Company states that as per his information, driving licence which was sought to be verified by the investigator had been taken from the chargesheet, but there was no attempt by the owner of the offending vehicle to produce a valid licence of it's driver. The owner cannot be seen to insulate themselves from liability by merely contending that they could not procure the licence from an errant driver. Moreover, the investigator of the insurance company has verified the licence which was available as part of the chargesheet and found it to be not issued from the *Licensing Authority, Jind.*

17. In this view of the matter and in the opinion of this Court, the MACT was not amiss in granting recovery rights, considering that it is the appellant's/owner's duty to, at the very least, make reasonable efforts to check the driving licence, which was not properly discharged nor was an attempt made to produce a valid driving licence before the MACT.

18. Accordingly, appeal stands dismissed.

19. Compensation awarded by the MACT stands confirmed and shall be disbursed, along with the accrued interest, as per directions given by the MACT.

20. Pending applications, if any, are rendered infructuous.

21. Statutory deposit, if any, be refunded to appellant/owner.

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

ANISH DAYAL, J

MARCH 25, 2026/MK/*sp*