$~

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

% ***Reserved on : 26.08.2022***
Pronounced on: 23.09.2022

\+ MAC.APP. 443/2013

DELHI TRANSPORT CORPORATION ..... Appellant
Through: Mr. Sarfaraz Khan and Mr. Mirza Amir Baig, Advocates

versus

RUBY & ORS. ..... Respondents
Through: Mr. Ravi Sabharwal, Advocate for R-6

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal emanates from the judgment dated 30.10.2012 ("**Impugned judgment"**) passed by the learned Presiding Officer, MACT II: South Distt. : Saket Courts, Delhi in Suit No. 125/11 titled as *Smt. Ruby and Ors. Vs. Prabhir Singh and Ors.* whereby the respondent Nos. 1-4/Claimants were awarded an amount of Rs.19,44,600/- as compensation with an interest @ 9% per annum, from the date of filing of the petition till realization is made by respondent No.6/Insurance Company with right to respondent No.6 to recover the same jointly and severally from the Appellant/ DTC and respondent No.5/Prabhir Singh.

The facts germane to the present appeal are as follows:

2. On the unfortunate day of 17.02.2011, an information vide DD No.66B was received at the Saket Police Station of an accident at Press Enclave Road, Modi Hospital, Saket. In the said accident, a DTC bus No. DL 1P C 1241, scooter No. DL 6S P 6441 and Santro Car No. DL 9C A 9877 were found in an accidental condition. Pursuantly, the PCR removed the injured to Modi hospital, where the doctors declared the injured was brought dead. It is pertinent to note that as per the election card, at the time of the accident, the deceased/ Sh. Abdesh Sharma was 26 years of age and was working as a Field Officer with Ex Servicemen Security Service on a salary of Rs. 9,500/-. He was survived by his wife, parents and a minor son.

3. Subsequently, a case was also registered under Sections 279 and 304A of IPC vide FIR 64/2011 by one Sh. Suresh Kumar Saini, who is the owner of the Santro Car No. DL 9C A 9877 and further investigation was conducted. As per the FIR, the offending vehicle/DTC bus was being driven by Prabhir Singh in a very rash and negligent manner which came from behind and hit a scooter No. DL 6S P 6441, Santro car No. DL 9C A 9877 and a cyclist, which is the deceased/Abdesh Sharma. As a result of the accident, the cyclist as well as the person on scooter suffered severe injuries.

4. Further, Charge sheet under Sections 279, 304 A, 420, 468, 471 of IPC were also filed. The charge sheet revealed that the death of the deceased occurred on account of the rash and negligent driving of the respondent No.5. Further, it also revealed that as per the post mortem report, the cause of death of the deceased was due to

hemorrhage shock due to multiple injuries and due to blunt external force which is possible in road traffic accidents. Pertinently, as per the charge sheet, the Offending vehicle's RC, fitness, permit and insurance were verified. Further, respondent No.5's driving license, which was allegedly made by the authorities from Mathura, was also verified, and was found to be fake.

5. At this juncture, it is relevant to note that, the Detailed Accident Report (hereinafter referred to as "**DAR**") was treated as the claim petition under Section 166 (4) of the Motor Vehicles Act, 1988 (hereinafter referred to as the "**Act**").

6. On getting notice of the DAR, reply was filed by the present respondent Nos. 5 and 6 as well as the Appellant. The Appellant and respondent No. 5 stated that the offending vehicle was insured with respondent No.6 vide policy no. 0411003110P000794083 for the period 28.08.2010 to 27.08.2011. They also stated that the respondent no.5 had a valid and effective driving license at the time of the accident. *Per Contra*, respondent No.6 stated that respondent no. 5 was not holding a valid driving license at the time of the accident. However, it admitted that the offending vehicle was insured with it vide policy no. 0411003110P000794083 for the period 28.08.2010 to 27.08.2011, during which the unfortunate accident occurred.

7. Vide order dated 20.04.2011. The learned Claims Tribunal framed the following issues for adjudication:

> *"1. Whether the deceased Avdesh Kumar succumbed to injuries sustained in road accident on 17.02.2011 at 20:00 hrs at Press Enclave Road in front of Modi Hospital Saket, New Delhi near due to rash and*

negligent driving of the vehicle No. DL-1PC-1241 being driven by its driver-R-1, owned by R-2 and insured by R-3/Insurance Company?
2. To what amount of compensation the petitioner is entitled and from whom?
3. Relief."

8. In support of the claim petition, respondent No.1/PW1 filed documents i.e., Ration card, Election card, Salary certificate, MLC, postmortem report, Final report under Section 173 Cr. PC, FIR, Fard DTC Bus, Arrest Memo, Driving License, RC and Insurance particulars and the same are annexed as Ex. PW1/1 to Ex. PW1/14. Respondent No. 6 examined R3W1, Sh. Jagdish Narang, Deputy Manager, who brought on record the insurance policy Ex. R3W1/1, containing the conditions of the insurance policy and further claimed that as per the report of the investigating officer, the driving license of the offender/respondent No.5 was fake and the same was not issued by the RTO, Mathura. He proved the driving license verification report Ex. R3W1/2, Notice Under order XII Rule 8 of CPC Ex. R3W1/3, postal receipt Ex. R3W1/4 and 5 and Acknowledgment Ex. R3W1/6 and 7. Further, respondent No.6 also examined R3W2, Sh. B.K Arya, Junior Clerk, ART Office, Mathura, U.P who brought the record of the license no. A-302 MTR 95. It was found to be issued in the name of Ashok Kumar, S/o Sh. Raghuvar Dayal, R/o Khamini, Mathura. He has stated that the driving license Ex. R3W2/1 was issued for the category of motorcycle only and the same is valid from 15.09.1995 to 14.09.2015. He also proved the verification report of the driving license Ex. R3W2/3.

9. Learned Claims Tribunal decided the issues in favor of the claimants/respondent Nos. 1-4 by holding that he is entitled to get the total compensation of Rs. 19,44,600/- along with an interest @ 9% per annum from the date of filing of the petition till realization of the amount from respondent No.6/Insurance Company with further right to recover the same jointly and severally from respondent No. 5 and the Appellant.

S. No	Head	Compensation awarded
Pecuniary Damages		
1.	Loss of Dependency	Rs. 18,89, 600/-
2.	Funeral charges	Rs. 10,000/-
3.	Loss of estate	Rs. 10,000/-
4.	Loss of Consortium	Rs.10,000/-
Non- Pecuniary Damages		
5.	Loss of love and affection etc.,	Rs. 25,000/-
Total Compensation awarded		**Rs.19,44,600 /-**

10. Aggrieved by the order of the learned Claims Tribunal, the Appellant herein filed an appeal under Section 173 of the Act, against the order of the learned Claims Tribunal before this Court praying for setting aside the Impugned Judgment, passed by the learned Claims Tribunal in Suit No.125/11. This Court issued notice in the present matter vide its order dated 17.05.2013.

SUBMISSIONS OF THE APPELLANT/DTC

11. The counsel for the Appellant initiated his arguments by submitting that the offending vehicle No. DL-1PC-1241 of the DTC was duly insured with respondent No.6 vide Policy No. 0411003110P00079083 which was valid, from 28.08.2010 to midnight 27.08.2011, whereas the accident had taken place on 17.02.2011. He vehemently submitted that the learned Claims Tribunal grossly erred in permitting the Insurance Company/respondent No.6 to recover the award amount from the Appellant/DTC. He further asserted that, even otherwise, the Impugned Judgment and the compensation award of Rs. 19,44,600/- along with interest @ 9% per annum from the date of filing of the petition till realization is not in accordance with law.

12. While relying on the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Swaran Singh*** reported as (2004) 3 SCC 297, the Appellant submitted that in order to avoid liability by the insurer, respondent No.6 not only has to prove breach of valid and effective driving license but also has to prove that breach on part of the insured was willful and that the said breach was so fundamental to become the cause of the accident. He further went ahead and submitted that respondent No.6 has not led any evidence which may prove that breach on part of the Appellant was willful or within their knowledge. He submitted that the Insurer is liable to raise a defense in a claim petition filed under Section 163 A or Section 166 of the Act *inter alia* in terms of Section 149 (2) (a) (ii) of the said Act. He vehemently submitted that mere absence,

fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defenses 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

In the present case, no such defense has been positively raised by the Insurer/respondent No.6 so that the Appellant could have proved otherwise that there was no negligence and that the Appellant had exercised reasonable care in the matter or fulfilling the conditions of the policy regarding use of vehicles by duly licensed driver. He argued that, had this defense been taken by respondent No.6, the Appellant being a public authority could have surely brought on record the whole process under which the driver/respondent No.5 was recruited.

13. Learned Counsel for the Appellant veered his submissions by submitting that the Driver/respondent No.5 was driving the vehicle under Appellant/DTC, which appointed respondent No.5/driver after perusing his driving license and after being satisfied about his ability and capability as a driver. Hence, the fake driving license by respondent No.5 cannot be treated as willful default or negligent conduct on part of the Appellant/DTC. He submitted that the Appellant is not expected to verify the driving license of each driver before appointing them. Furthermore, he argued that, even

otherwise it cannot be said by any stretch of imagination that the cause of accident was fundamental and the same was due to holding of fake driving license at the time of the alleged incident.

14. With regard to the Compensation awarded by the learned Claims Tribunal to respondent No.1-4, Mr. Khan submitted that the award of Rs. 19,44,600/- is contrary to law and facts and is illegal, perverse and highly exorbitant. He submitted that the learned Claims Tribunal, while calculating his compensation should have based the income of the deceased @ 9,500/- p.m as he was to pay income tax also. Further, he submitted that the learned Claims Tribunal erred in not deducting 1/3rd of his income towards the personal expenses and furthermore erred in treating respondent No.2 as a dependent.

15. Lastly, Mr. Khan submitted that merely because the accident took place, the learned Claims Tribunal grossly erred in holding that the deceased/ Sh. Abdesh Sharma died due to the rash and negligent driving of bus No. DL-1P C 1241 by respondent No.5.

16. Learned counsel for the Appellant further bolstered his submissions by relying on judgment of the Hon'ble Supreme Court in ***Pepsu Road Transport Corporation v. National Insurance*** reported as (2013) 10 SCC 217 and ***Ram Chandra Singh v. Raja Ram*** reported as (2018) 8 SCC 799.

SUBMISSIONS OF THE RESPONDENT NO.6

17. Learned counsel for respondent No. 6, while relying on the impugned Judgment submitted that there is no liability *qua*

respondent No.6 as there was a 'deliberate breach' on part of the owner and driver and the entire liability was to be squarely fastened upon the Appellant/DTC and its driver/respondent No. 5 exclusively. The learned Claims Tribunal rightly by all means granted the right to recover the amount of compensation from the Appellant and respondent No. 5 jointly and severally.

18. He submitted that the Appellant has violated the terms and conditions of the insurance policy by authorizing the offender/respondent No.5 to drive the insured vehicle, when he was not holding a valid driving license, and in view of that, respondent No.6 is not liable to indemnify the owner/Appellant. He further asserted that the liability of respondent No.6 is subject to the terms and conditions of the insurance policy and cover note and also subject to the provisions of law and statutes. Relevant part of the policy R3W1/1 is reproduced hereunder:

> ***"Persons or classes of persons entitled to drive***
>
> *Driver's Clause: Persons or classes of persons entitled to drive:- Any person including Insured provided that the person driving holds an effective and valid driving licence to drive the category of vehicle insured hereunder, at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that a person holding an effective and valid Learner's Licence to drive the category of the vehicle insured hereunder may also drive the vehicle when not used for transport of passengers at the time of the accident and that the person satisfies the requirements of Rule 3 of Central Motor Vehicle Rule, 1989."*

19. Learned counsel for respondent No.6 advanced his submissions by adducing two very crucial evidences. *Firstly*, the evidence of Ex. R3W1/Sh. Jagdish Narang and submitted that the Appellant/Insured

has violated the conditions contained in the insurance policy in respect of DTC Bus bearing no. DL-01-PC-1241 regarding the person who can drive the insured vehicle. Further, as per the original driving license verification report from Mathura Licensing Authority/ Ex. R3W1/2, the driver is a fake one and the driving license of respondent No.5/Offender was not issued by RTO Mathura. He further submitted that respondent No.6 made strenuous efforts vide Notice (Ex. R3W1/3) to get the Appellant to produce the original policy and Driving license of the driver of the offending vehicle. However, despite service of legal notices upon them, the Appellant has neither produced the original policy nor driving license of the offender to counter their evidence, which speaks in itself that the Appellant had nothing in rebuttal. Learned counsel went ahead and submitted that the non-rebuttal of evidence on the part of respondent No.5 and the Appellant is to be drawn as adverse inference against them. Relevant part of the evidence of R3W1 is reproduced hereunder:

> *"2. That I have brought the computerized copy of the insurance Policy in respect of DTC Bus bearing no. DL-Ol-PC-1241. The same is EXR3W1/1 at point 'B' it contained condition regarding the person who can drive the vehicle insured.*
> *3.That the present case is DAR matter and the investigation officer has got the driving license of the driver of the offending vehicle verified. The original Driving Licence verification report from Mathura Licencing Authority is Ex. R3W1/2.*
> *4.That as per the report of the investigation officer the driving license of the driver is take one and the same was not issued by RTO Matura.*
> *6. That the insured has given the vehicle for driving to a person who was not holding the valid Driving Licence to drive vehicle in question and that has violated the policy condition mentioned at pointed 'B'…"*

Secondly, Mr. Sabharwal further cushioned his contentions, by relying on the evidence of R3W2/Sh. B.K. Arya, Junior Clerk, ART Office, Mathura, UP and submitted that the license i.e., A-302 MTR 95 brought on record was found to be issued in the name of Ashok Kumar S/o Sh. Raghuvar Dayal, R/o Khamini, Mathura. He has stated that the driving license Ex. R3W2/1 was issued for the category of motorcycle only and the same is valid from 15.09.1995 to 14.09.2015. He also proved the verification report of the driving license Ex.R3W2/3.

Relevant part of the examination of Sh. B.K. Arya/ R3W2 is reproduced hereunder:

> *"I have brought the record regarding licence no. A-302 MTR 95 which is issued in the name of Sh. Ashok Kumar S/o Sh. Raghuvar Dayal R/o Khamini, IV Iathura. The licence was issued for the purpose of motorcycle only and the same is valid for the period from 15.09.95 to 14.09.15. The copy of the same is Ex. R3W2/1. Witness is shown the licence filed by the IO. He has denied that the same is not issued from our authority. The witness also denied the stamp and the signatures upon the said DL Same is exhibited as Ex. R3W2/2. The verification report of said DL obtained by the IO from our authority is Ex. R3W2/3 and it is signed by Licencing Incharge, Sunil Kumar Singh and LO, Sh. Omprakash, Regional Inspector. The signatures of Sh. Omprakash is at point A and the signatures of Sh. Sunil Kumar Singh is at point B."*

20. He further concluded his submissions by submitting that the owner here in the present case is DTC, which is another limb of the State, and runs fleet of buses for communication in Delhi and NCR. He submitted that State owned transporters owe a greater responsibility and duty to take 'due and adequate care' to check and verify the authenticity and validity of the 'driving license' of their drivers,

before putting the command of the vehicles/buses in their hands and risking the lives of many such passengers. He submitted that the Appellant cannot be treated *at par* to an 'individual owner' in this respect; who has all the wherewithal to enquire the validity of 'driving license' of their drivers before their employment. Any deviation in such a 'duty of care', in this regard is to be treated as 'gross negligence' on part of DTC, which amounts to deliberate breach of the 'insurance policy' on their part and indulging in flouting the provisions of the Act.

LEGAL ANALYSIS

21. I have given an anxious consideration to the submissions of both the parties and have further perused the records.

22. With respect to the issue of negligence by respondent No.5 in driving the DTC bus, the Appellant in its written statement stated that no public witness has been examined in order to frame respondent No.5 falsely in the accident. Further, it was stated that DTC bus No. DL 1P C 1241 was not being driven by respondent No.5 rashly and negligently. In fact, the Car, Scooter and Cycle were involved in the accident due to which accident took place and it was because of the fault and negligent driving of the Car, Scooter and Cyclist and the Appellant DTC Bus has been falsely implicated in the accident in order to grab compensation. Further, it was stated that the bus was being driven by respondent No.5 in the normal

speed and there was no negligence on his part and hence, driver/respondent No.5 was not at fault.

23. I am of the opinion that this contention needs to be repelled. The learned Claims Tribunal had dealt with this issue in detail and held in paras 11 and 12 of the judgment that the accident took place because of the rash and negligent driving on part of the driver/respondent No.5. Relevant part of the judgment is reproduced hereunder:

> *"11. It is well settled law that where petition under Section 166 of the Act is instituted, it becomes the duty of the petitioner to establish rash and negligent driving. To prove rash and negligent driving in a petition under Motor Vehicles Act, Tribunal need not go into the technicality because strict rules of procedure and evidence are not followed. Basically, in road accident cases, Tribunal is simply to quantify the compensation which is just rational and reasonable on the basis of inquiry. The proceedings under Motor Vehicles Act are not akin to the proceedings in a civil suit. Further, roving enquiry is not required to prove the rashness and negligence on the part of the driver as has been held in* ***Kaushumma Begum and others Vs. New India Assurance Co. Ltd****. 2001 ACJ421SC.*
>
> *12. PW-1 has stated that on 17.02.11 at about 8.00 PM her husband Sh. Avdesh was on his way back to home by his cycle. When he reached in front of Modi Hospital, Press Enclave Road, Saket, New Delhi, all of a sudden DTC bus bearing no. DL 1P C 1241 which was being driven by the respondent no. 1 in a rash and negligent manner hit the bicycle of her husband. Her husband fell down and sustained injuries. She stated that her husband died on the spot. Perusal of DAR reveals that the case was registered on the statement of Suresh Kumar Saini whose car was also hit by the DTC bus. He stated that on 17.02.11 at about 8.00 PM he alongwith his friend was going towards Modi Hospital in his Santro car bearing no. DL 9C A9877. In the meantime, a DTC bus bearing no. DL 1P C1241 plying on route no. 534 came at a fast speed being driven in a rash and negligent manner and hit a scooter then his car and it also hit a cyclist who sustained injuries in the accident. He had stated that DTC bus driver was apprehended on the spot by the public persons. There were fresh damages on the front portion of the bus. Perusal of postmortem report reveals the cause of death was hemorrhagic shock due to multiple injuries due to blunt external force possible in a road traffic accident. Hon'ble High Court of Delhi in case*

*titled as **2009 ACJ 287 National Insurance Company Limited Vs. Pushpa Rana** has held that where a petitioner files the certified copy of the criminal record showing completion of Investigation, issuance of charge-sheet, certified copy of the FIR, all these documents are sufficient proof to come to the conclusion that the driver was negligent."*

24. I am in full agreement with the reasons provided by learned Claims Tribunal which had decided this issue in favour of the Claimants/respondent Nos. 1-4 relying on the evidence of PW-1 coupled with the FIR, Charge sheet and other documents. The Hon'ble Supreme Court in ***Sunita v. Rajasthan SRTC*, (2020)** 13 SCC 486 has held that, *"...Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring*

owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation…"

25. Another quintessential issue raised by the Appellant which needs adjudication is with regard to the liability of respondent No.6 in compensating the claimants/respondent No. 1-4. The learned Claims Tribunal vide the impugned judgement held that respondent No.6/Insurance Company was liable to compensate the claimants with further right to recover the same jointly and severally from the Appellant/ DTC and respondent No.5/Prabhir Singh. However, it is the contention of the Appellant that as per the judgment of ***Swaran Singh* (*supra*)**, in order to avoid liability by the insurer, respondent No.6 not only has to prove breach of valid and effective driving license but also has to prove that the breach on part of the insured was willful and that the said breach was so fundamental to become the cause of the accident. It was further also argued by the Appellant that Appellant/DTC appointed respondent No.5/driver after perusing his driving license and after being satisfied about his ability and capability as a driver. Hence, the fake driving license by the respondent No.5 cannot be treated as willful default or negligent conduct on part of the Appellant/DTC.

26. In this regard, this Hon'ble Court in the matter of ***New India Assurance Co. Ltd. v. Sanjay Kumar & Ors.*** reported as ILR (2007) II Delhi 733, has held that although the onus is on the insurer (**respondent No.6 in the present case**) to prove that there was breach of condition of policy, but once the record for the Licensing Authority is summoned to prove that the driver did not possess a

valid driving license, the onus would shift on the insured (**the owner of the vehicle**) who must then step into the witness box and prove the circumstances under which he acted and handed over the vehicle to the driver. Relevant part of the judgment is reproduced hereunder:

> ***"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.*
>
> ***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.*

> ***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."*

27. In the present case, evidence of Ex. R3W1/Sh. Jagdish Narang, proves that the Appellant had violated the conditions of the insurance policy with regard to the offending vehicle. Further, it also proves that the driving license of respondent No. 5 is fake and has not been issued by RTO Mathura, as alleged. It is also pertinent to note that respondent No.6 issued Notice under Order 12 Rule 8 CPC (**Ex. R3W1/3**) to the Appellant by registered post to produce the original policy and driving license of respondent No.5 and the said Notice was duly served upon the Appellant/Insured as well as respondent No.5. However, despite the above notice, the insured has neither produced the original policy and driving license of the offender/respondent No.5 nor has come to court to adduce his evidence. Further, the evidence of R3W2/Sh. B.K. Arya, Junior Clerk, ART Office, Mathura, UP, proves that the license i.e., A-302 MTR 95 brought on record was found to be issued in the name of Ashok Kumar for the category of motorcycle only for the period 15.09.1995 to 14.09.2015. Furthermore, the verification report of the driving license (**Ex. R3W2/3**) was also proved by him.

28. What emanated from the discussion is that evidently, the Appellant/ DTC did not lead any evidence to prove the skills of the offender/respondent No.5. Further it also failed to exercise reasonable care before employing respondent No.5 as it has not taken any necessary driving test with respect to capability and competence of respondent no.5 or about the genuineness of his driving licence, therefore, the DTC cannot absolve itself of its liability. Further, despite notice under Order 12 Rule 8 CPC, the Appellant failed to reply to the same. Applying the ratio of ***Sanjay Kumar* (*supra*)** I hold that the owner was guilty of willful breach of the conditions of policy. ***Swaran Singh's case (supra)*** would also not help the owner/Appellant and respondent No.5. After being proved that the driver did not possess an effective driving license, the owner did not come forward to explain the circumstances under which he handed over the vehicle to him. Hence, the very act of the Appellant/DTC amounts to breach of the insurance policy. At this juncture, it is relevant to mention that the numerous instances of rash and negligent driving involving DTC buses resulting in severe injuries and deaths in Delhi in the period concerned cannot be lost sight of. Even today, the strain of this malaise subsists. A public transport undertaking is not expected to unleash untrained, incompetent and unlicensed drivers upon the unsuspecting innocent public.

29. If the aforementioned contention of the Appellant is to be accepted, the same would result in even the owner/driver of the offending vehicles getting away without paying a single penny as

compensation. This would be feeding and encouraging misconduct as well as perpetuating illegality. Hence, I am in full agreement with the reasoning given by the learned Claims Tribunal with regard to the above issue.

30. An insurance contract is based on *uberrimae fides* i.e. utmost good faith. When an insurer extends an insurance cover, it is done in the belief that the insured would take all necessary precautions and act as a reasonable person. The Appellant is a statutory authority. It is statutorily mandated to provide public transport facility in the National Capital Territory of Delhi. It is expected from a public employer to check the antecedents of its prospective employees and in particular the fact that the candidate possessed a valid driving license and that only after passing the special training, the selected candidates would be offered employment. In employment of drivers by a Government undertaking, the basic qualification is the possession of the driving license. The exercise of checking the validity of the driving license could be carried out even after offering provisional employment to the successful candidates. The position of a public transport undertaking, or a large public transporter, who engage a number of drivers-in hundreds and thousands, to drive their fleet of vehicles, is different from a private individual who engages one or two drivers for his/ her personal service. The latter would not possess the necessary administrative or financial wherewithal to verify the driving license. The individual may perhaps be also constrained by exigencies to employ a driver immediately without awaiting a driving licence verification report.

Hence, it is evident that the Appellant/ DTC being the employer/owner of the vehicle has clearly failed in its duty to exercise reasonable care apropos use of the public transport bus for ferrying ordinary unsuspecting passengers who board it with the bonafide belief that its driver is duly licensed and has undergone requisite training and has the competence to drive a public bus on the roads of Delhi. It is expected from a public employer such as the appellant DTC, being a statutory undertaking, that it would exercise due caution and care apropos verification of documents submitted by a person who is offered employment.

31. Going forward with regard to the issue of compensation, the Appellant has challenged the Impugned judgment to the extent that learned Claims Tribunal, while calculating his compensation, should have based the income of the deceased @ 9,500/- p.m. as he was to pay income tax also. Further, he submitted that the learned Claims Tribunal erred in not deducting 1/3rd of his income towards the personal expenses and furthermore erred in treating respondent No.2 as a dependent. Therefore, as the appeal in the present case is of the Appellant/DTC, I am bound to adjudicate on this limited part.

32. Learned counsel for the Appellant contends that, while calculating the compensation, the learned Claims Tribunal should have based the income of the deceased @ 9,500/- p.m. as he was to pay income tax also. It is pertinent to note here that the learned Claims Tribunal, after relying on the evidence of PW-2 and the salary certificate (**Ex. PW 1/5**) has based the income of the deceased as Rs. 9,500/- only. No interference in this regard is necessary.

33. It is further the contention of the Appellant/DTC that the learned Claims Tribunal erred in treating respondent no.2/father of the deceased as dependent. The learned Claims Tribunal has held that there were 4 dependents i.e., Wife, mother, father and one minor son. I agree with the learned Claims Tribunal that the father would be treated as a dependent. The father was aged 61 at the time of filing the petition before learned Claims Tribunal and was a senior citizen. Therefore, the father of the deceased would be considered a dependent on the deceased. Pertinently, there are 4 dependents on the deceased so a deduction of **1/4th** towards the personal expenses of the deceased would be made as per the Hon'ble Supreme Court's dicta in ***Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*** reported as (2009) 6 SCC 121.

34. In view of the above, the appeal filed by the Appellant/DTC is dismissed and the judgment passed by the learned Claims Tribunal in Suit No. 125/11 does not call for any interference. No orders as to cost.

GAURANG KANTH, J.

SEPTEMBER 23, 2022
PS