



2025:DHC:3878



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:16.05.2025

+ **MAC.APP. 211/2023**

AMIT SHARMA

..... Appellant

versus

**NEW INDIA ASSURANCE CO. PVT.
LTD AND ORS**

..... Respondents

+ **MAC.APP. 212/2023**

TUFANI YADAV

..... Appellant

versus

**NEW INDIA ASSURANCE CO. PVT.
LTD AND ORS**

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Pradeep Rana, Ms. Riya Rana, Mr. Ankit Rana, Mr. Kartik Gadi, Mr. Robin Singh, Mr. Deepak Chillar & Mr. Tushar Rohmetra, Advocates.

For the Respondents : Mr. Aditya Kumar & Ms. Ila Nath, Advocates for Respondent No.1.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**



JUDGMENT

1. The present appeals arise out of the judgment and award dated 24.12.2022 (hereafter '**impugned award**') passed by the learned Presiding Officer, MACT-02 (West), Tis Hazari Courts, Delhi in MACP No. 126/2019, whereby compensation for a sum of ₹35,84,328/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization was awarded in favour of the claimants, with the right of recovery granted to the insurer — New India Assurance Co. Ltd. — against the driver and owner of the offending vehicle.
2. While MAC.APP. 211/2023 has been filed by the owner of the offending vehicle, namely Amit Sharma, MAC.APP. 212/2023 has been preferred by the driver, Tufani Yadav. Both appellants assail the impugned direction allowing recovery rights to the insurer, contending that the said finding is erroneous in law and on facts, as the driver was duly qualified and competent to operate the vehicle in question.
3. Briefly stated, on 01.06.2018, the deceased Neeraj Kumar, while travelling on his motorcycle, met with a fatal accident involving a goods carriage bearing registration no. DL-1LN-9032, driven allegedly in a rash and negligent manner by appellant Tufani Yadav and owned by appellant Amit Sharma. The said vehicle was found to be insured with New India Assurance Co. Ltd./ Respondent at the relevant time.



4. The claim petition was filed by the widow, minor son, and parents of the deceased under Section 166 of the Motor Vehicles Act, 1988. After appreciation of evidence on record, the learned Tribunal awarded a compensation of ₹35,84,328/- with interest @ 6% p.a. and held the insurer liable to pay the compensation in the first instance with the liberty to recover the same from the driver and owner of the vehicle on the ground that the driver lacked the requisite endorsement for transporting hazardous goods as mandated under Rule 9 of the Central Motor Vehicles Rules, 1989.

5. The learned counsel for the appellants submitted that the learned Tribunal gravely erred in permitting the respondent–insurance company to recover the awarded compensation from the appellants on the ground of violation of the terms and conditions of the insurance policy. It is submitted that no such violation is made out on the record that would justify the grant of recovery rights in favour of the insurer. The finding of the learned Tribunal is based solely on the absence of an endorsement on the driving license of the appellant–driver under Rule 9 of the Central Motor Vehicles Rules, 1989, despite there being no evidence to establish a willful or conscious breach on the part of the insured.

6. He contended that the driver of the offending vehicle, appellant Tufani Yadav, had duly undergone the requisite training for transportation of hazardous goods and was operating the vehicle under the employment of the appellant–owner in the normal course of his duties. It is further submitted that a mere absence of endorsement on



the driving license ought not to be construed as a breach sufficient to disentitle the appellants of indemnification under the policy, particularly when no nexus has been shown between the alleged infraction and the cause of the accident.

7. The learned counsel placed reliance on the Circular dated 20.04.2022 bearing no. F.DTO(HQ)/Tpt/2022/04/CD No. 075682002 issued by the Transport Department, Government of NCT of Delhi, which acknowledges that endorsements in terms of Rule 9 of the Central Motor Vehicles Rules, 1989, had not been consistently made by the licencing authorities until that point in time. It is urged that the said circular itself clarifies that the endorsement requirement had not been strictly enforced prior to its issuance, and in such circumstances, it cannot be said that the driver was disqualified or that the insured had violated any statutory obligation.

8. It is further argued that in the absence of any evidence to show that the driver was either incompetent or untrained to drive the vehicle in question, the learned Tribunal was not justified in presuming a fundamental breach of the policy conditions. The impugned award fails to consider that the insurance company had not discharged its onus to prove that the accident was directly attributable to the lack of endorsement, or that the owner had employed the driver with knowledge of any such deficiency.

9. The learned counsel for the appellants also submitted that in view of the settled legal position as laid down in various decisions, including in *Pepsu Road Transport Corporation v. National*



Insurance Company Ltd. : (2013) 10 SCC 217 and *National Insurance Co. Ltd. v. Swaran Singh & Ors. : (2004) 3 SCC 297*, the burden lies on the insurer to establish a willful and conscious breach of the terms of the policy. In the present case, no such evidence has been brought on record, and therefore, the direction granting recovery rights to the insurer is wholly unsustainable in law.

10. The learned counsel, therefore, submitted that the impugned direction in the award dated 24.12.2022 granting recovery rights to the insurer deserves to be set aside, and the liability of the insurer to indemnify the insured in terms of the policy ought to be upheld in its entirety.

11. *Per contra* the learned counsel for the respondent-Insurance Company vehemently opposed the present appeal and placed reliance upon the judgment in the case of *Mangla Goods Carrier v. National Insurance Co. Ltd. : 2023:DHC:6745*, wherein this Court held that endorsement of the driving license for driving a transport vehicle carrying hazardous goods is a mandatory condition and mere completion of trailing is not sufficient.

12. The learned counsel submitted that it is an admitted fact that sub rule (3) of Rule 9 of the Central Motor Vehicle Rules, 1989 ('**MV Rules**') had mandated that the person driving goods carriage of dangerous or hazardous nature to human life shall obtain the necessary endorsement in the driving license for permission to drive such vehicle.



Analysis

13. The short question that falls for consideration in the present appeals is whether the learned Tribunal was justified in granting recovery rights to the insurer on the ground that the appellant-driver was not in possession of the requisite endorsement on his driving license to drive a vehicle carrying hazardous goods, despite having undergone certified training for the same, and in the absence of any material to show that the vehicle was in fact carrying hazardous substances at the time of the accident.

14. At the outset, it may be noted that the claim petition arises from a motor vehicular accident dated 01.06.2018 involving a goods carriage vehicle, which the insurance company asserts was a vehicle meant for the transportation of hazardous goods. The learned Tribunal proceeded to allow the claim in favour of the claimants but granted recovery rights to the insurer on the sole ground that the driver did not possess an endorsement under Rule 9 of the MV Rules, authorising him to drive such vehicles.

15. However, a perusal of the record reveals that there is no evidence to substantiate the assertion that the vehicle in question was at the relevant time carrying hazardous goods. It is a matter of common experience and logic, as pointed out by learned counsel for the appellants, that any oil tanker entering an oil depot is likely to be empty after unloading its contents or would be arriving to load a fresh consignment. The DAR is conspicuously silent on this crucial factual aspect. No employee or representative of the concerned oil depot or



any fuel station was examined to affirm that the tanker was carrying combustible material at the relevant time. I have also perused the *panchnama*, *superdari* documents, indemnity bond and seizure memo and the same do not disclose that the tanker was filled with any hazardous or flammable goods.

16. It is also relevant to note that the Investigating Agency, during the course of trial, failed to establish that the offending vehicle driven by the appellant driver was in fact carrying any combustible or hazardous substance at the time of the incident. No witness examined during trial made any assertion to that effect, nor was any suggestion put to the witnesses during cross-examination indicating that the vehicle was laden with hazardous material. In the absence of such evidence, the presumption that the vehicle was transporting dangerous goods cannot be sustained.

17. In this regard, reliance placed by the appellant on the judgment of the Hon'ble Allahabad High Court in *New India Assurance Co. Ltd. v. Lakshmi* : 2018 SCC OnLine All 6122, is well-founded. The Court in that case observed that the requirement of endorsement arises only when a vehicle is actually carrying goods of a hazardous or dangerous nature. The Court held that an empty container or tanker, by itself, cannot be treated as hazardous unless there is evidence to prove that it contained or was carrying such goods at the time of the accident. In the absence of such evidence, no breach of Rule 9 of the MV Rules can be presumed. The relevant portion of the judgment is reproduced hereunder:



“10. The object behind the proviso is that a person who is driving vehicle carrying such goods must be trained enough so that no causality of any kind takes place on account of careless or negligent driving. The purpose of endorsement on the license is also same. The question, therefore, is as to whether empty container of such goods by itself to be treated as dangerous or hazardous to human life. In the opinion of the Court an empty container or cylindrical bottle cannot be termed as goods dangerous or hazardous nature to human life. Rule 9(3) makes endorsement obligatory if one intends to carry goods that are dangerous or hazardous by nature to human life. So emphasis is that goods by very nature should be dangerous or hazardous to human life. A mere container or bottle that might be used to contain dangerous or hazardous goods cannot be treated itself as dangerous or hazardous by nature. It is quite possible that empty containers are carried from one place to another place and, therefore, unless sufficient evidence is led by the parties that those containers that were loaded on a truck carried dangerous or hazardous goods, the driver while driving such vehicle with a valid license entitling him to a drive transport vehicle will not get rendered ineligible just for carrying empty cylinders and in such circumstances the insurance company will not get absolved from its liability in a third party claim. It could be a case where manufacturer transports cylinders to the industry/company and it could equally be a case where containers are transported from production unit to sale unit or to a Godown at distant place. In such circumstances, transportation of such empty cylinders or containers from one place to another would not require driver to have endorsement under proviso to section 14 of Act, 1988. Since containers or cylinders are not dangerous or hazardous goods by nature, therefore, in the event of a road accident involving transport vehicle carrying such empty cylinders/containers the insurance company cannot get rid of its liability to meet third party claim as per terms of insurance policy.

18. Even otherwise, the appellant-driver was holding a valid driving license at the time of the accident and had undergone the requisite training for driving vehicles carrying hazardous goods, a fact duly evidenced by a training certificate which has not been disputed by the insurer. The endorsement referred to in Rule 9 of the MV Rules, is



merely a ministerial act to be performed by the licencing authority and not a prerequisite that nullifies the competency or training of the driver. A coordinate Bench of this Court in *National Insurance Co. Ltd. v. Sonia Mittal* : 2017 SCC OnLine Del 11202 while deciding somewhat similar issue, held as under :

11. Coming to the defence taken by the insurance company vis-à-vis the driver and owner of the offending vehicle, what distinguishes the case at hand is that the driver of the offending vehicle had undergone the requisite training which had been duly certified. There is nothing on record to show that the insurance company raises questions about the validity of the training certificate. It is insisting merely on the fact that there was no endorsement secured from the transport authority in terms of the requirement under the rules. That, however, ought not cut any ice. What is the crucial requirement is the special training for driving a vehicle meant for transportation of hazardous goods. That requirement had been fulfilled. Securing of endorsement in wake of such certification of the special skill was more of ministerial nature. The rule of main purpose would apply [see National Insurance Company v. Swaran Singh (2004) 3 SCC 297]. The plea of insurers for recovery rights is, therefore, rejected.

19. A perusal of Rule 9 of the MV Rules mandates that the driver must have knowledge and training so that no causality of any kind takes place on account of careless or negligent driving — not necessarily a formal endorsement whose purpose is also the same.

20. The circular dated 20.04.2022 relied upon by the insurance company, issued by the Transport Department of the GNCTD, merely directs licencing authorities to make such endorsements henceforth. It does not cast any burden upon existing license holders to seek endorsements retrospectively nor does it affect the validity of licenses or the training already acquired by drivers.



21. The reliance placed by the Insurance Company on judgment in the case of *Mangla Goods Carrier v. National Insurance Co. Ltd.* : (*supra*), in the opinion of this Court, is misplaced, inasmuch as the said judgment did not consider the earlier binding decision in *National Insurance Co. Ltd. v. Sonia Mittal* (*supra*), where as noted above, this Court held that the absence of endorsement on the license, despite the driver having the requisite certified training, would not amount to a disqualification or breach of policy conditions. The Court categorically held that securing such an endorsement was a ministerial act and the core requirement was possession of specialised training and knowledge.

22. I find myself in agreement with the reasoning adopted in *National Insurance Co. Ltd. v. Sonia Mittal* (*supra*), which also drew strength from the law laid down by the Hon'ble Apex Court in *National Insurance Co. Ltd. v. Swaran Singh* : (2004) 3 SCC 297, wherein it was held that a breach must be proved to be willful and fundamental to deny indemnity to the insured and rule of main purpose would apply. The relevant portion is reproduced hereunder :

Summary of findings

110. *The summary of our findings to the various issues as raised in these petitions is as follows:*

xxx

xxx

xxx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main



purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

23. Therefore, in the present case, where the driver had undergone requisite training, was in possession of a valid license, and where there is no evidence that the tanker was carrying hazardous goods at the relevant time, the mere absence of endorsement under Rule 9 of the MV Rules cannot be construed as a breach of statutory conditions sufficient to grant recovery rights to the insurer. At best, the absence of endorsement may attract an administrative penalty under the applicable rules, but it does not render the license invalid or the insurance policy inoperative vis-à-vis third-party claims.

24. Upon consideration of the totality of facts and circumstances, the present appeal is allowed and the plea of the insurers for recovery rights is, therefore, rejected.

25. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

MAY 16, 2025