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

% ***Date of decision: 06th July 2026***

+ **MAC.APP. 809/2018 & CM APPL. 36851/2018**

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Ms. Shruti Jain, Adv. for Mr. Pankaj Seth, Adv.

versus

BASANT BALLABH @ BASANT PANDEY & ORS .....Respondents

Through: Mr. S N Prashar & Mr. Ritik Singh, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This appeal has been filed by Insurance Company assailing Award dated 06th June 2018, read with order dated 24th July 2018 passed by the Motor Accident Claims Tribunal, Saket Courts, New Delhi (‘***MACT/Tribunal***’), in petition no. 75646/2016.

2. On 30th December 2012 at about 8.15 p.m., when respondent no.1 was standing on the road, he was hit by *Innova* car no. HR 55 ET 2689, which was being driven by respondent no. 2, owned by respondent no. 3, *M/s Raj Tours and Travels*, a commercial tour operator. As a result of the accident respondent no.1 sustained grievous injuries.

3. *Ms. Shruti Jain*, counsel appearing for the insurance company, seeks grant of ‘*recovery rights*’ against the driver and the owner on the ground that the driver was holding a fake driving licence.

4. The Joint Registrar's order dated 04th September 2019 noted that notice to respondent nos.2 and 3, driver and owner, was received back unserved with remarks "*address not found*"; accordingly, fresh notices were directed to be issued. On 01st November 2019, the appellant's counsel stated that they were still trying to locate fresh addresses of respondent nos.2 and 3. On 23rd January 2020, counsel for appellant stated that fresh address of respondent no. 2 and 3 could not be located and sought liberty to move an application to serve respondent nos.2 and 3 through substitution.

5. Since no application for substitution service was filed for the next three dates, last opportunity was given on 08th September 2021 Thereafter, costs were imposed on 12th January 2022 for the delay in filing the application.

6. Finally, on 18th May 2022, ***CM APPL. 1174/2022*** was moved under Order V Rule 20 of the Code of Civil Procedure, 1908, which was allowed. On 23rd March 2023, proof of service through publication was filed and, accordingly, respondent nos.2 and 3 were considered duly served.

7. Since there is no appearance on behalf of respondent nos. 2 and 3 despite service, they are proceeded against *ex parte*.

8. On determination of liability, counsel for insurance company pleaded before the MACT that respondent no.1 was driving the offending vehicle using a fake license. In support of its contention, the verification report of driving licence ***Ex.R3W1/3*** was produced, as per which the driving licence of *Mukesh Kumar Yadav*, respondent no. 2 (the driver), was found to be fake.

9. This issue was considered by the MACT in *paragraphs 24 to 28* in the impugned award. Relying upon the decisions in ***United India Insurance co ltd. v Lehru & Ors***. (2003) 3 SCC 338 and ***National Insurance Co. Ltd. v. Swaran Singh*** (2004) 3 SCC 297, the MACT held that the insurer was required to prove that the owner of the vehicle had been negligent in verifying

the genuineness of the driving licence.

10. In this regard, testimony of **R2W1,** *Om Prakash*, proprietor of *M/s. Raj Tours and Travels* needs to be considered. He deposed that he had been running the firm since 2004 and owned about 15-16 vehicles. He further stated that the driver was not known to him prior to joining the firm, that he had taken the driver's driving test, which the driver had successfully passed, and that he also knew *Anil Sharma*, the driver's previous employer for the last 4-5 years, who had also certified his ability.

11. Testimony of **R3W1**, a witness on behalf of the insurance company, also requires consideration. He deposed that the driving licence of the driver of the offending vehicle had been verified through the company's investigator, whose report revealed that no such licence had ever been issued by the Faridabad Licensing Authority. It is stated that the insured vehicle falls under the category of a commercial vehicle, and as per certain terms and conditions of the policy, the driver is required to possess a valid fitness certificate and a valid driver’s license.

12. The issue relating to verification of driving licences has recently been considered by this Court in ***United India Insurance Company v. Sarjo & Ors***. 2026:DHC:5182, which relates to the issue of a fake driving licence held by a driver employed by the Delhi Transport Corporation. The Court considered, *inter alia*, the decisions in ***Lehru*** (*supra*) and ***Swaran Singh*** (*supra*), reiterating that the insurer must establish not only that the licence was fake but also that the insured had failed to exercise due diligence in verifying its genuineness. The Court therefore held as under:

> *“28. This being the settled position of law, <u>the burden of proof on the insurance company is to firstly, establish that the licence was fake at the time of the</u>*

> *accident; and secondly, the owner did not exercise due diligence in verifying the licence. Though the insurance company would remain liable to pay the compensation, it would nevertheless have recovery rights against the employer.”*
>
> (emphasis added)

13. However, the Court observed that the decisions in ***Lehru*** (*supra*), ***Swaran Singh*** (*supra*), and ***National Insurance Co. Ltd. v. Geeta Bhatt & Ors.*** (2008) 12 SCC 426 were rendered in the context of private vehicles and proceeded to examine the extent and nature of the duty of due diligence applicable to owners of commercial vehicles. In this regard, reference can be made to *paragraphs 32 to 34* of the judgment, which are extracted as under:

> 32. *In the opinion of this Court, the extent of due diligence, which a private owner can or must exercise, as compared to that which a public authority (employing a fleet of vehicles) or a commercial operator, (operating a fleet of vehicles) must exercise, is fundamentally different.*
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> *33. A private employer may not have the administrative machinery at its command to seek physical verification, at least prior to 2015 (when the Parivahan facility came into existence or when it became fully operational and accessible). However, a commercial fleet operator or a State Authority operating a fleet of buses, taxis or transport vehicles has vast administrative machinery at its command. The responsibility is much greater considering that such vehicles carry members of the public who travel on the assurance that they will be safe in the said vehicles.*
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> *34. It would, therefore, be incumbent upon such entities to ensure that the drivers operating such vehicles, whether carrying a private consumer or the public at large in transport vehicles, have undergone a complete verification process, beyond merely*

taking a driving test, so as to verify the authenticity of their licences.

35. In the present case, an effort was made by the DTC to issue a letter to the Mathura Authority for verification of the licence. However, they did not wait for the response. Even if the response had not been received in time, the DTC machinery could have taken several further steps to ensure proper verification. However, it chose not to do so. Had the Mathura Authority responded, even with some delay, the DTC would have become aware at that very stage that the driver was carrying a fake licence. This is apart from the fact that, as noted earlier, ex facie the licence appeared to be fake on the basis of the dates endorsed therein.

(emphasis added)

14. In this context, the Court also considered the opinion by a Coordinate Bench of this Court in ***Delhi Transport Corporation v. United India Insurance Company Limited and Others*** 2017:DHC:2649.

15. The MACT also noted that **R3W2**, the Inspector from the RTO, Faridabad, deposed that there was no official record related to the driving licence of respondent no. 2 and that the said licence had never been issued by the RTO, Faridabad.

16. In this context, the Court has already recorded an opinion, as above, with regard to owners of commercial vehicles, who are required to exercise a higher degree of diligence in verifying the authenticity of the driving licence of their drivers.

17. In the present case, there is no proof that the owner/respondent no.3 had actually taken steps to verify the license of respondent no. 2/driver, in any manner, before permitting the driver to operate a passenger-carrying commercial vehicle. As observed by this Court in ***Sarjo*** (*supra*), merely

conducting a driving test does not amount to due verification of the driver's competence or the genuineness of the driving licence. An employer, particularly a commercial fleet operator or a State authority, is expected to exercise a higher degree of diligence by getting the driver's licence verified from the competent licensing authority before entrusting such a vehicle to the driver. The relevant paragraphs from ***Sarjo*** (*supra*) are extracted below:

> "*37. The only distinguishing fact in that matter was that DTC had not conducted the necessary driving tests regarding the capability and competence of the drivers, and, therefore, it was held that DTC could not absolve itself of liability. Though this distinguishing feature has been pointed out by the counsel for DTC in the present appeal, this Court does not consider it to be material. The mere conduct of a driving test by the employer does not amount to certification of the driver's competence or fitness to drive.*
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> *38. The DTC is not a statutory authority empowered under the Motor Vehicles Act, 1988 or the Rules framed thereunder to issue driving licences or certify a person's eligibility to drive a motor vehicle. Any driving test conducted by it is only for its internal assessment and satisfaction and has no statutory basis. It is only upon due examination by the competent licensing authority that a driving licence is issued, which constitutes a statutory authorization permitting the holder to drive. Accordingly, the submission of the DTC is untenable and cannot be accepted.*"
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> (emphasis added)

18. In view of the observation made hereinabove, this Court is of the opinion that the insurance company is entitled to recovery rights.

19. Accordingly, the appeal is allowed and stands disposed of in the above terms, granting '*right of recovery*' to the insurance company against

respondent no.3.

20. By Order dated 21st May 2019, *70%* of the awarded amount was directed to be released. The balance amount, as per revised compensation, as arrived at *vide* judgment of the same date, in ***MAC.APP. 624/2019***, be released to the claimant.

21. Statutory deposit, if any, be refunded to appellant-Insurance Company, only if the order of deposit has been complied with.

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

(ANISH DAYAL)
JUDGE

JULY 6, 2026/sm/bp