IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 19.06.2025

\+ **MAC.APP. 11/2023, CM APPL. 932/2023 & CM APPL. 934/2023**

MANISH GARG & ANR. .....Appellants

versus

UNITED INDIA INSURANCE CO. LTD & ANR. .....Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Neeraj Goyal, Adv. through V.C.

For the Respondents : Mr. Animesh Sinha, Mr. Shubham Budhiraja & Ms. Jagriti Singh, Advs. for R-1.
Mr. Shrey Chathly, Adv. for R-2.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CM APPL. 934/2023 *(application to place the additional evidence on record)*

1. The appeal arises out of the judgment and award dated 17.08.2022 (hereafter '**impugned award**') passed by the learned Motor Accidents Claims Tribunal in MACT No. 72/2019 and MACT

No. 714/2022, whereby the learned Tribunal granted the right of recovery to the insurer — United India Assurance Co. Ltd. — against the driver and owner of the offending vehicle.

2. The present application has been filed by the appellants under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ('**CPC**') seeking to place on record training certificates of Appellant No. 2/driver required for plying hazardous goods vehicle required under Rule 9 of the Central Motor Vehicle Rules, 1989 ('**MV Rules**'). The appellants further pray to place on record the affidavits of the appellants to the effect that at the time of the accident the offending oil tanker was not carrying any hazardous substance.

3. The learned counsel for the appellants submitted that the said training certificates had been misplaced and could not be procured even after due diligence by Appellant No. 2/driver. He submitted that it was only after passing of the impugned award, Appellant No. 2/driver found the said certificates in his house.

4. He submitted that at the stage of trial the appellants duly informed their counsel that the offending oil tanker was empty at the time of the alleged accident, however, their counsel advised them that now the Insurance Company will defend the claim petition and there was no need for the appellants to defend their claims separately.

5. He further submitted that the said documents are material and would be required by this Court for the adjudication of the present appeal.

6. *Per contra*, the learned counsel for Respondent No. 1/Insurance Company vehemently opposed the arguments raised by the learned counsel for the appellants and consequently prayed that the present application be dismissed.

7. He submitted that the reasons given by the appellants in the present application are an afterthought to reopen an already decided case.

8. He submitted that the learned Tribunal by order dated 05.07.2022 recorded that Appellant No. 2/driver did not wish to lead any evidence and Appellant No. 1/owner was not present to lead any evidence and subsequently the learned Tribunal closed their right to lead evidence. He submitted that in view of aforementioned order it cannot be said that the appellants were not duly represented or were not provided with an opportunity to lead evidence before the learned Tribunal.

9. He further submitted that it was on the appellants to prove that they had been incorrectly advised by their counsel and therefore, failed to lead evidence before the learned Tribunal.

10. I have heard the learned counsel for the parties in respect to the present application.

Analysis

11. The short question that falls for consideration before this Court is whether by the present application the documents that the appellant prays to place on record are material for the adjudication of the present appeal.

12. Order XLI Rule 27 of the CPC provides for the scheme of placing additional evidence before the appellate court. The same reads as under:

> *"ORDER XLI*
> ***APPEALS FROM ORIGINAL DECREES***
>
> ***xxxx xxxx xxxx***
>
> ***27. Production of additional evidence in Appellate Court.—****(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*
>
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
>
> *(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
>
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*
>
> *the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> *(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

13. The learned counsel for the appellants contended that by the present application he prays to place on record the training certificates of Appellant No. 2/driver as well as the affidavits of the appellants

stating that at the time of the accident the offending oil tanker was not carrying any hazardous substance.

14. He further contended that the said certificates are material for the adjudication of the present appeal since they were valid at the time of the accident and the learned Tribunal without perusing the same granted recovery rights to Respondent No. 1/Insurance Company.

15. The Hon'ble Apex Court in the case of ***Union of India vs. Ibrahim Uddin and Ors.* : (2012) 8 SCC 148** held that while adjudicating an application under Order XLI Rule 27, the admissibility of additional evidence is not dependent upon the issue of whether the applicant at an earlier stage had an opportunity to lead evidence, but depends upon whether the appellate court requires the said evidence for adjudicating the pending appeal. The relevant portion of the judgment is reproduced hereunder:

> *"49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved.* ***The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.*** *The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh [1951 SCC 178 : AIR 1951 SC 193]*

and Natha Singh v. Financial Commr., Taxation [(1976) 3 SCC 28 : AIR 1976 SC 1053] .)"

(emphasis supplied)

16. Further the Hon'ble Apex Court in the case of ***Sanjay Kumar Singh v. State of Jharkhand*** **: (2022) 7 SCC 247** held that if the additional evidence sought to be adduced before the appellate court has a direct impact on the main issue of the case, then such application can be allowed and the additional evidence can be relied upon by the appellate court to pronounce its judgment. The relevant observations are reproduced hereunder:

> *"4. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the*

appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

17. In the present case, it is the contention of the appellants that during the course of trial, the said training certificates of Appellant No. 2 had been misplaced and even after due diligence they could not be recovered. Further, it was upon the advice of their counsel that they did not lead any evidence before the learned Tribunal.

18. In the present case, considering the beneficial legislation of the MV Act as held by the Hon'ble Apex Court in the case of ***State of Arunachal Pradesh v. Ramchandra Rabidas alias Ratan Rabidas and another*** : **(2019) 10 SCC 75**, in the opinion of this Court, the appellants ought to be given an opportunity to adduce the said evidence on record.

19. It is pertinent to note that Respondent No. 1/Insurance Company nowhere in their reply to the present application has disputed or denied in any way the authenticity of the said training certificates and has only opposed the present application on aspect of lapse by the appellants in not placing these documents at the stage of trial.

20. From a perusal of the aforesaid training certificates, they appear to be issued by a government recognized training school prior to the date of accident and therefore, it can safely be presumed that these certificates are genuine.

21. The affidavit sought to be placed on record as additional evidence cannot be said to be uncontroverted and would require that opportunity be given to the Insurance Company to cross examine the deponent and lead evidence, if necessary. However, as noted above, the training certificate issued by an appropriate authority, which has not been disputed, can safely be relied upon for deciding the dispute between the parties.

22. The present appeal has been filed by the/ appellants challenging the recovery rights granted to Respondent No. 1/Insurance Company. In the opinion of this Court, for pronouncing the judgment on the issue involved, the certificate evidencing that the driver had undergone training programme for safe transportation of hazardous goods is relevant and require consideration.

23. Therefore, in light of the observations made by the Hon'ble Apex Court in ***Union of India vs. Ibrahim Uddin and Ors.*** (**supra**) and ***Sanjay Kumar Singh v. State of Jharkhand*** (**supra**) this court being an appellate court finds reasons to exercise its inherent power under Order XLI Rule 27 and take the training certificates of Appellant No. 2 on record.

24. The present application is allowed in the aforesaid terms.

MAC.APP. 11/2023 & CM APPL. 932/2023 *(application seeking ex-parte ad interim orders to stay the operation of the impugned award dated 17.08.2022)*

25. The present appeal arises out of the judgment and award dated 17.08.2022 (hereafter '**impugned award**') passed by the learned

Motor Accidents Claims Tribunal in MACT No. 72/2019 and MACT No. 714/2022, whereby compensation for a sum of ₹22,15,897/- along with interest at the rate of 7% 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 — United India Assurance Co. Ltd. — against the driver and owner of the offending vehicle.

26. Briefly stated, on 16.11.2018, Respondent No. 2/injured, while travelling on his scooter was heading towards his college. Suddenly an oil tanker bearing registration No. DL-01GC-6785, driven allegedly in a rash and negligent manner by Appellant No. 2/driver without signaling its indicator, took a left turn and hit the scooter of Respondent No. 2/injured. The said vehicle was found to be insured with Respondent No. 1/Insurance Company at the relevant time.

27. Due to the impact Respondent No. 2 suffered grievous injuries on his left ankle. Due to his treatment, he was not able to attend his classes and had to let go of his hotel management studies.

28. This incident led to the registration of FIR No. 1064/2018 at Police Station Mangolpuri, for the offences under Section 379/337 of the Indian Penal Code, 1860 ('**IPC**').

29. In the present case the Detailed Accident Report ('**DAR**') filed before the learned Tribunal came to be treated as a claim petition which was registered as MACT No. 72/2019. Further Respondent No. 2 on 12.08.2022 filed a separate claim petition under Section 166 of the MV Act registered as MACT No. 714/2022.

30. The learned Tribunal, after examining the pleadings, evidence, and documents on record, assessed the compensation at ₹22,15,897/- and awarded an interest at the rate of 7% per annum to Respondent No. 2. The details thereof are as under:

S.no.	**Heads of Compensation**	**Amount**
1.	Loss of Earning Capacity	₹14,36,206/-
2.	Medical Expenses	₹2,51,690/-
3.	Hotel Management Course Fees	₹1,38,000/-
4.	Conveyance, Attendant Charges and Special Diet	₹90,000/-
5.	Pain and Sufferings	₹1,00,000/-
6.	Loss of Amenities	₹1,00,000/-
7.	Marriage Prospects	₹1,00,000/-
	TOTAL	**₹22,15,897/-**

31. The learned counsel for the appellants submitted that the learned Tribunal failed to appreciate that there was no fundamental breach of the insurance policy by the appellants and recovery rights had wrongly been granted to Respondent No. 1/Insurance Company.

32. He submitted that the learned Tribunal failed to consider the fact that the offending oil tanker at the time of the accident was not carrying any hazardous substance.

33. He submitted that Appellant No. 2/driver at the time of the accident was carrying a valid driving license and as per Rule 9 of the MV Rules had undergone a number of training programs for plying goods vehicle carrying hazardous substances.

34. He further submitted that the learned Tribunal erred in concluding that a separate endorsement under Rule 9(3) of the MV Rules was required by Appellant No. 2/driver for plying the offending oil tanker.

35. *Per contra* the learned counsel for the Respondent No. 1/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.

Analysis

36. 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, in the absence of any material to show that the vehicle was in fact carrying hazardous substances at the time of the accident. The additional evidence of the certificates showing that the driver had undergone training for plying vehicles carrying hazardous substances is also to be considered.

37. At the outset, it may be noted that the claim petition arises from a motor vehicular accident dated 16.11.2018 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 ground that the driver did not possess an endorsement under Rule 9(3) of the MV Rules, authorising him to drive such vehicles.

38. In the present case, there is no evidence on record which shows that the offending oil tanker at the time of the accident was carrying any hazardous substance.

39. It is 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.

40. There is no mention of the offending tanker containing oil or any hazardous substance, or of any seizure, in the FIR or the charge sheet. The DAR is conspicuously silent on this crucial factual aspect. No evidence on this aspect had been led by Respondent No. 1/ Insurance Company to show that the offending oil tanker was carrying any combustible material at the time of the accident as well. In the

absence of such evidence, the presumption that the vehicle was transporting dangerous goods cannot be sustained.

41. The Hon'ble Allahabad High Court in the case of ***New India Assurance Co. Ltd. v. Lakshmi*** **: 2018 SCC OnLine All 6122** held 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."

42. Even otherwise, Appellant No. 2/ driver was undisputably 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 Respondent No. 1/Insurance Company. The endorsement referred to in Rule 9(3) 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."

43. 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.

44. 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."*

45. Therefore, in the present case, Appellant No. 2/driver had undergone requisite training and was in possession of a valid driving license. Further, there is no evidence that the tanker was carrying hazardous goods at the relevant time, the mere absence of endorsement under Rule 9(3) 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.

46. Therefore, in view of the aforesaid discussion, the present appeal is allowed. Consequently, the impugned award is set aside to the extent of grant of recovery rights to the insurance company against the appellants.

47. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

JUNE 19, 2025