
(2012) 03 DEL CK 0668
In the Delhi High Court
Case No : Mac. App. No. 628 of 2010

Anurag Kumar

APPELLANT

Vs

United India Insurance Co. Ltd. and Ors

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Evidence Act, 1872 — Section 149, 165
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2012) 03 DEL CK 0668

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : N.K. Handa, for the Appellant; K.L. Nandwani, Advocate for the Respondent No. 1 Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—A short ground on which the judgment dated 07.08.2010, awarding a compensation of Rs. 11,52,850/- along with interest @ 7.5% per annum in favour of the Appellant who suffered injuries in an accident which occurred on 31.03.2009, has been challenged is that although the First Respondent United India Insurance Co. Ltd. was under obligation to satisfy its liability to pay the compensation in the first instance in case of an injury to third party, the Claims Tribunal straightway made the owner of the vehicle liable to pay the compensation.

2. On the liability, the Claims Tribunal held as under:

10. LIABILITY:-

Respondent No. 3 has stated that respondent No. 2 was not possessing driving licence. As per statement of respondent No. 1 & 2 recorded U/s 165 Evidence Act, respondent No. 2 was not possessing driving licence and respondent No. 1 was aware at the time of accident that motorcycle was being used for driving by respondent No. 2. Accordingly, no liability can be fastened on the insurance.

Respondent No. 1 & 2 are therefore jointly and severally liable to pay the award amount. Respondent No. 1 being the owner to pay the said amount.

3. The owner of the vehicle (the Second Respondent) and the driver (the Third Respondent) preferred not to contest the Claim Petition and their right to file the written statement was closed by the Claims Tribunal by an order dated 17.12.2009. Since the Third Respondent was a minor and, therefore, could not possess a licence on the date of the accident, the Claims Tribunal examined them u/s 165 of the Evidence Act. Statements of the Second Respondent Hari Mohan (owner) and Sunil (driver of the offending vehicle at the time of the accident) are extracted hereunder:

Statement u/s 165 of Evidence Act of Sh. Hari Mohan, aged 20 years, s/o Sh. Madan Lal, r/o X/2163, Raghuvar Pura, Chand Mohalla, Delhi-31.

ON SA

I am the registered owner of the motor cycle bearing No. DL-13SD-0812. I am working as an Auto Repair Mechanic with one Mr. Madal Lal at Jheel. My motorcycle remains parked at my house. My younger brother Sunil, often takes my motorcycle to run errands. I have the knowledge that my younger brother Sunil is almost 18 years of age but does not have a DL issued in his name. The date of birth of my younger brother is 16-11-1991. On 31-03-09 also my brother had taken my motorcycle and an accident was caused in which one person was injured. My brother Sunil was arrested in the criminal case bearing FIR No. 107/09 of PS Kotwali u/s 279/337 IPC. I have got my motorcycle released on superdary from the court of concerned M.M.

Statement u/s 165 of Evidence Act of Sh. Sunil, aged 18 years, s/o Sh. Madan Lal, r/o X/2163, Raghuvar Pura, Chand Mohalla, Delhi-31.

ON SA

On 31-03-09, I was driving the offending motor cycle bearing No. DL-13SD-0812, registered owner of which is my brother Hari Mohan. My date of birth is 16-11-1991. I does not have a DL in my name nor did I possess any DL on the date of accident, being a minor. An accident was caused by my motorcycle when I was driving it on 31-03-09 at Raj Ghat. I have been arrested in the criminal case bearing FIR No. 107/09 PS Kotwali u/s 279/337 IPC.

4. Although the Second Respondent admitted that his younger brother used to take his motorcycle, he also gave his date of birth 16.11.1991, i.e., he was less than 18 years on the date of the accident, i.e., on 31.03.2009. In the absence of any evidence that the Second Respondent had taken precaution that the vehicle is not driven by a person, in this case his own brother who did not have a valid driving licence. It shall have to be assumed that the Second Respondent having failed to exercise reasonable care to avoid breach of the terms of policy the Insurance Company was entitled to avoid indemnification of the insured. Yet, the First Respondent (the insurer) was under obligation to satisfy the award vis-?-vis

the third party.

5. This Court had the occasion to consider the statutory liability of the Insurance Company to satisfy the award u/s 149(4) of the Act. In MAC APP.329/2010 titled "Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors. " decided on 29.02.2012, this Court considered the judgments in Malla Prakasarao Vs. Malla Janaki and Others, , National Insurance Co. Ltd. Vs. Kusum Rai and Others, ; National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, ; Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, ; and Premkumari and Others Vs. Prahlad Dev and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and others, , New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , United India Insurance Company Ltd. Vs. Lehru and Others, , National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, , National Insurance Co. Ltd. Vs. Geeta Bhat and Others, , and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, . This Court held that in view of the authoritative judgments of the Supreme Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Insurance Company was under obligation to satisfy the award in favour of a third party in spite of willful breach in the terms of policy. This Court quoted para 73, 104, 105, 106 and 107 of Swaran Singh (supra) and opined that the Insurance Company can recover the compensation paid to the third party from the insured in the same proceedings without filing a separate civil suit. Paras 104, 105 and 107 of Swaran Singh (supra) are extracted hereunder:

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.

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107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or

the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

6. In view of forgoing discussion, I am of the view that the Claims Tribunal erred in completely exonerating the First Respondent. The impugned order so far as it exonerated the First Respondent is set aside. It is directed that the First Respondent shall satisfy the award in favour of the Appellant and shall have a right to recover the same from the Second and the Third Respondents (the owner and the driver of the offending vehicle).

7. It is argued by the learned counsel for the Appellant that a large sum of the compensation was ordered to be held in Fixed Deposit. 50% of the award amount was ordered to be released to the Appellant forthwith. Since major portion was towards permanent disability resulting into loss of earning capacity, the Claims Tribunal's direction to keep 50% of the amount in FDR for a period of five, ten and fifteen years cannot be faulted.

8. The Appeal is allowed in above terms.