

(2011) 03 CAL CK 0148
In the Calcutta High Court
Case No : C.O. No. 2615 of 2008

Arati Pradhan

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6)

Citation : (2011) 03 CAL CK 0148

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Santosh Kr. Das and Sucharita Paul, for the Appellant; Rajesh Singh, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is at the instance of the claimant and is directed against the order No. 40 dated May 27, 2008 passed by the learned Judge, M.A.C.C. Tribunal cum Additional District Judge, Fast Track First Court, Contai in M.A.C.C. No. 261 of 2004.

2. The claimant filed an application for compensation under the provisions of the Motor Vehicles Act. In the insurance company/opposite party No. 1 herein is contesting the said claim application. The case was at the stage of hearing argument after close of the evidence on behalf of both the parties. At that stage, the insurer / opposite party No. 1 herein filed two application, one for filing an additional written statement and another for leave to file additional written statement. Upon hearing both the sides, the prayer of the insurance company was allowed and the additional written statement filed by the insurance company was accepted. At that stage, the insurance company prayed for production of driving on the pretext that from the evidence it has been brought to light that one Tapan Kumar Samanta drove the alleged vehicle without any driving licence. But the driving licence of the offending vehicle belonged to one Upendra Mandal. Under the circumstances, the claimant was directed to produce the copy of the driving licence as prayed for in the petition dated June 13, 2006. That prayer was

allowed. Being aggrieved, this application has been preferred.

3. Now, the point for consideration is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the claimant has adduced evidence with respect to the claim for compensation. The evidence on behalf of both the parties was closed. At that time, the Defendant/insurance company filed an application for filing the additional written statement pursuant to the impugned order. The prayer for filing additional written statement was allowed and pursuant to that order, the additional written statement filed by the Defendant/insurance company was also accepted. For that reason, when additional written statement was accepted, an opportunity should be given to the parties to adduce evidence in support of their respective contentions over the additional written statement. For that purpose, the learned Tribunal directed the claimant to produce the copy of the driving licence as prayed for in the petition. Mr. Das has contended that the claimant has closed his evidence and he has no responsibility to produce the driving licence as directed. He has also contended that the burden of proof of the insurer's contention lies upon the insurance company and it is to produce the necessary driving licence.

5. In support of his contention, Mr. Das has relied upon the decisions reported in AIR 2004 SC 1513 particularly para No. 105, 2008 (3) T.A.C. 940(Delhi) particularly paragraph Nos. 4, 9 15 and 16 and Commissioner of Customs (Prev.) Vs. Sudhir Saha, particularly para No. 4. Thus, he submits that the burden of proof of such contention lies upon the insurance company and not on the Petitioner.

6. On the other hand, Mr. Singh, appearing on behalf of the opposite party No. 1, has referred to the decisions of 2010(2) T.A.C. 385(SC) and 2010(4) T.A.C. 116 (Cal) in support of his contention that the tribunal is within its authority to pass such directions and that the Hon''ble Apex Court has given direction to police and claims tribunal for compliance of Section 158(6) of the Motor Vehicles Act, 1988. Thus, he supports the impugned order.

7. Having considered the said decisions and the materials available in the record, it transpires that one Tapan Kumar Samanta drove the offending vehicle without any driving licence but the driving licence of the offending vehicle belonged to Upendra Mandal. Under the circumstances, the necessary directions are given by the tribunal. The tribunal is within its authority to call for such documents since a question cropped up whether the actual driver of the offending vehicle was driving the said vehicle. But the burden of proof lies upon the insurer and not on the claimant as per decision of AIR 2004 SC 1513 and 2008 (3) T.A.C. 940(Del). The tribunal is within its authority to call for the necessary documents from the concerned police station and to examine witness/witnesses thereon. The driving licence must have been seized in connection with the criminal case lodged over

the accident. In that case, the decision of the Apex Court in 2010(2)T.A.C. 385(SC) is very much clear that the provisions of Section 158(6) of the Motor Vehicles Act, 1988 must be complied with. The directions were issued to police and the claims tribunal and suggestions were made to the insurance companies to streamline the process and avoid unnecessary delay for the purpose. The tribunal is, therefore, within its authority to call for the necessary driving licence, and if necessary to call for witnesses of the concerned police station for elucidation of the question that surfaced during the trial of the claim case. The Hon"ble Single Bench of this Hon"ble Court has decided in 2010 (4) T.A.C. 116 (Cal) that the tribunal has the authority to give necessary directions upon the concerned police authority for production of the driving licence in question u/s 158(6) of the Motor Vehicles Act, 1988 also.

8. Therefore, the learned tribunal is at liberty to permit the insurer to adduce evidence in support of its defence. The driving licence in question, if seized by police, may be called for from the concerned police authority as observed above.

9. In view of the above observations, the impugned order cannot be supported. The impugned order is hereby set aside.

10. The revisional application is disposed of in the manner indicated above.

11. Considering the circumstances, there will be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.