
(1989) 04 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 66 of 1987

Babu and Another

APPELLANT

Vs

Kamla Devi and Another

RESPONDENT

Date of Decision : 24-04-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1990) 2 ACC 216 : (1990) ACJ 182 : (1989) 1 RLW 163

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : A.K. Rajvanshi, for the Appellant; D.R. Lunkar, for the Respondent

Final Decision : Allowed

Judgement

Milap Chandra, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against the award of the Motor Accidents Claims Tribunal, Bikaner, dated February 10, 1987 by which the claimant-respondent No. 1 has been granted compensation to the tune of Rs. 58,000/- with interest at the rate of 9 per cent against the appellant No. 1 Babu (driver of the vehicle) and the appellant No. 2 Yusuf Khan (owner of the vehicle). The respondent No. 2, Oriental Fire & General Ins. Co. Ltd., has not been held liable to pay the compensation. The facts of the case giving rise to this appeal may be summarised thus.

2. On July 1, 1983, the claimant-respondent No. 1 boarded 3-wheeler taxi No. RSF 3049 on hire at Bikaner for going to Gangashahar. At that time, it was being driven by Babu (appellant No. 1) and was owned by his brother Yusuf Khan (appellant No. 2). It met with an accident near Hanumanji's temple, Gangashahar. As a result thereof, claimant-respondent No. 1 received injuries. She filed a claim petition before the Motor Accidents Claims Tribunal, Bikaner against the appellants and the insurance company (respondent No. 2). The appellants filed their reply, seriously opposing the claim petition. The insurance company did not choose to file its reply. The claimant, owner and driver of the

vehicle produced their evidence. The insurance company did not produce any evidence. After hearing the parties, the learned Tribunal gave award as said above. The insurance company was not held liable on the ground that the driver Babu was a minor at the time of the accident and he was not holding any driving licence.

3. The learned counsel for the appellants has contended that the learned Tribunal seriously erred in dismissing the claim petition against the respondent No. 2, particularly, when no reply to the claim petition was filed and no evidence was produced by it. He relied upon *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC).

4. In reply, it has been contended by the learned counsel for Oriental Fire & General Ins. Co. Ltd. (respondent No. 2) that the Tribunal rightly held that the insurance company was not liable to pay any compensation as the vehicle was being driven by an unlicensed driver. He relied upon Section 96 (2) (b) (ii) of the Act.

5. The learned counsel for the claimant-respondent No. 1 duly supported the appeal and adopted the aforesaid arguments advanced by the learned counsel for the appellants.

6. It is the admitted case of the parties that the claimant Kamla Devi/boarded the 3-wheeler taxi RSF 3049 on hire on the day of the accident, it was being driven by the appellant No. 1 Babu, it was owned by his brother Yusuf Khan (appellant No. 2), the appellant Babu was minor at that time and he was not holding any driving licence. The appellant No. 2 Yusuf Khan has stated in his reply that his brother Babu (appellant No. 1) drove the vehicle without his permission. Babu has admitted in his statement that he took the said 3-wheeler taxi without the permission of his brother Yusuf Khan. Yusuf Khan has deposed that he never permitted his brother Babu to drive his 3-wheeler taxi. There is no material on record to its contrary. Under these facts and circumstances, it is very difficult to hold that the appellant No. 2 committed the breach of the condition of the insurance policy requiring that the vehicle was to be driven by a licensed driver only. It has been observed in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ411 (SC) at page 417, para 14, as under:

(14) It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not (Sic.) duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is "guilty"

of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.

In view of these facts, circumstances and authoritative observations, it is difficult to endorse the views of the learned Tribunal that the respondent No. 2 (insurance company) could not be held liable. As such the appeal succeeds.

7. Consequently, the appeal is allowed. The Oriental Fire & General Ins. Co. Ltd., Bikaner (respondent No. 2) is also held liable to pay the compensation to the extent as provided in Section 95 of the Act.