

(2011) 07 DEL CK 0422
In the Delhi High Court
Case No : MAC App. 306 of 2009

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Akram Hussain and Others	RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166, 4, 5

Citation : (2011) 5 ILR Delhi 437

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Harpreet Singh Uppal, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—This appeal is directed against the judgment and award dated 20.03.2009 passed by the Motor Accident Claims Tribunal, whereby and where under compensation in the sum of Rs. 2,32,000/- was awarded to the Respondent No. 1 on a claim petition preferred by him u/s 166 read with Section 140 of the Motor Vehicles Act, 1988.

2. With the consent of the parties, the appeal was taken up and heard at the admission stage.

3. Before advertng to the legal submissions of the parties, a few facts may be delineated so as to afford a factual background to the legal submissions sought to be urged. A claim petition was preferred by the Respondent No. 1 - Shri Akram Hussain claiming compensation for the grievous injuries sustained by him consequent to the motorcycle bearing No. DL-8-SU-5274 hitting his scooter from behind. It was alleged in the claim petition that the accident was the result of the fast speed, and the rash and negligent manner in which the offending motorcycle was being driven. The driver, the owner and the insurer of the motorcycle, who were impleaded in the claim petition as Respondents, filed their written

statements denying their liability to pay compensation to the injured victim.

4. The Appellant/Insurance Company took the plea that the Respondent No. 2 had a driving licence for driving a Light Motor Vehicle (Non-Transport), however, at the time of the accident, he was driving a motorcycle. The Respondents No. 2 and 3, on the other hand, took the stand that the Respondent No. 2 had a driving licence for a higher category, and therefore, it could not be said that he was incompetent to drive a lower category vehicle and that in any case, non-possession of a driving licence for a lower category of vehicle does not amount to violation of the terms and conditions of the Insurance policy.

5. The learned Claims Tribunal held that since the driver in the present case had a valid driving licence for driving LMV and was qualified to drive LMV, he apparently also possessed the qualification to drive a vehicle of a lower category. In these circumstances, it could not be said that the violation was so fundamental as would have contributed to the cause of the accident. The learned Claims Tribunal, therefore, refused to grant recovery rights to the Appellant Insurance Company and directed the Appellant to pay the entire award amount to the Respondent No. 1.

6. Aggrieved by the aforesaid findings of the Claims Tribunal, the Appellant Insurance Company has preferred the present appeal on the ground that the learned Claims Tribunal failed to appreciate that the motorcycle comes under a different category from LMV (NT) and that if a person knows how to drive a motor car, it does not necessarily mean that he is qualified to drive a motorcycle as well.

7. In the above context, Ms. Suman Bagga, the learned Counsel for the Appellant, pointed out that in the course of his cross-examination, the Respondent No. 2, who was driving the alleged offending vehicle and who appeared in the witness-box as R1W1, categorically admitted that the vehicle driven by him was in the name of his mother and that he had a driving licence for driving LMV (NT). Ms. Bagga also referred to and relied upon the testimony of R3W2 - Shri Naresh Chand, LDC, Delhi Transport Authority, West Zone, Janak Puri, New Delhi who proved on record the driving licence of the Respondent No. 2 (Ex.R3W2/A) as a driving licence for driving LMV (NT) only, and in particular on the statement of the said witness that the Respondent No. 2 was not authorized to drive a motorcycle/two-wheeler under the driving licence held by him. Ms. Bagga contended that a motorcycle was an altogether different category of vehicle, which was incapable of being clubbed with any other category, and as the Respondent No. 2 was not holding a driving licence for driving a motorcycle at the time of the accident, there was a clear breach of the terms and conditions of the Insurance policy and hence the Insurance Company was not liable to pay any compensation to the injured- victim and the liability to pay compensation, if any, was that of the Respondents No. 2 and 3.

8. Ms. Bagga further urged that the learned Claims Tribunal failed to appreciate

that the Respondent No. 2 being the son of the insured/owner, the Respondent No. 3, was driving the motor cycle with the knowledge and consent of the insured/owner. The Respondent No. 3 had the full knowledge that the driving licence held by the Respondent No. 2 did not entitle him to drive a motorcycle. There was, thus, wilful breach of the terms and conditions of the policy on the part of the insured by allowing the Respondent No. 2 to drive the motor cycle owned by her without a valid and effective driving licence to drive the said vehicle. The Appellant - Insurance Company, therefore, ought to have been exonerated of any liability in the present case, and at the very least, ought to have been given recovery rights to enable it to recover the awarded amount from the insured/owner.

9. Ms. Bagga further contended that impugned award was contrary to the principles of law laid down by the Hon"ble Supreme Court in the decisions rendered by it in the cases of National Insurance Co. Ltd. Vs. Swaran Singh and Others, United India Insurance Co. Ltd. Vs. Gian Chand and others, and National Insurance Co. Ltd. Vs. Kusum Rai and Others, . In the aforesaid judgments, it has been clearly held that when the insured has handed over the vehicle for being driven to an unlicensed driver, the Insurance Company got exonerated from its liability to bear the claims of the third party, who might have suffered on account of the vehicular accident caused by such unlicensed driver.

10. Reference was also made by Ms. Suman Bagga, the learned Counsel for the Appellant, to the judgment of the Supreme Court rendered in the case of National Insurance Co. Ltd. Vs. Geeta Bhat and Others, the relevant part whereof reads as under:

An owner of the vehicle is bound to make reasonable enquiry as to whether the person who is authorized to drive the vehicle holds a licence or not. Such a licence not only must be an effective one but should also be a valid one. It should be issued for driving a category of vehicle as specified in Motor Vehicles Act and/or Rules framed there under.

11. Mr. Harpreet Singh Uppal, the learned Counsel for the Respondents No. 2 and 3, sought to rebut the aforesaid contentions of the learned Counsel for the Appellant by submitting that the Insurance Company had not taken any plea in its written statement that the breach of policy condition was wilful on the part of the insured. Furthermore, there was nothing on record to suggest that the keys of the offending vehicle were taken by the Respondent No. 2 with the consent of the insured. Mr. Uppal placed reliance upon the three-Judge Bench decisions of the Hon"ble Supreme Court rendered in the cases of Sohan Lal Passi Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, the decision of this High Court in V. Mepheron and Anr. v. Shiv Charan Singh and Ors. 1998 ACJ 601 and the decision of the Punjab and Haryana High Court in the case of Rakesh Kumar Arora v. Balwant Singh 2001 (1) T.A.C. 677 (P&H).

12. He contended that the common thread which runs through all the aforesaid

decisions is that in order to bring the case within the mischief of "breach", it must be proved by the Insurance Company that there was wilful default on the part of the insured. Where there is no evidence on record to indicate that the owner of the vehicle had parted with the keys of the vehicle, deliberately or knowingly, to a person who had caused the accident, it cannot be said that there was an express or implied consent on the part of the insured/owner, so as to exonerate the Insurance Company from the liability to pay compensation to the victim.

13. Mr. Uppal contended that in the case of Sohan Lal Passi (supra), the Hon'ble Supreme Court had gone to the extent of laying down that technical objection should not be allowed to be raised by the Insurance Company. In that case, the person driving the vehicle was not even a driver and was in fact a cleaner, who was not holding any licence, but the actual driver who had a valid driving licence, had authorized him to drive the vehicle. In the circumstances, the Supreme Court held that no breach of the terms and conditions of the policy had been established. It observed:

In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? While interpreting the contract of insurance, the Tribunal and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act.

It was further observed by the Supreme Court:

The whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of Accidents Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle.

14. In the case of V. Mepherson (supra) decided by a learned Single Judge of this Court, the car which had caused the accident was being driven by the son of the owner at the time of the accident. He had no licence to drive the car. The learned Tribunal mulcted the liability on the driver and owner and exempted the Insurance Company on the ground that the driver had no licence to drive the car. Setting aside the judgment of the Tribunal, the High Court held that if it had been brought on record that the owner himself had allowed the vehicle to be

driven by his son, who was not duly licenced, then, the bar created by Sub-section (2) of Section 96 would have been attracted but the facts which had come on record showed that the son had in the absence of the father, who had gone out of station, used the vehicle without the consent and knowledge of his father. Interpreting the expression "breach" occurring in Section 96(2)(b), the Court held that it was incumbent upon the insurer to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful and if the insurer was unable to establish wilful breach on the part of the insured, the Insurance Company could not repudiate its statutory liability.

15. Mr. Uppal also relied upon the following apposite observations made by the Supreme Court in the case of Swaran Singh (supra):

The insurance company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of the policy on the part of the insured, the insurance company cannot be absolved of its liability. This Court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the conditions of the contract of insurance in the part of the insurance company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the record.

The summary of our findings to the various issues as raised in these petitions are as follows:

(i). Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii). Insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii). The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv). The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v). The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(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 licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence 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 insured u/s 149(2) of the Act.

The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

16. It will be apposite at this stage to take a look at the provisions of law relevant for deciding the controversy in the present case. Section 2(10) defines a driving licence as follows: Section 2 Clause (10):

driving licence" means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class of description;

17. The definitions of light motor vehicle and motor cycle which are set out in Clause (21) and Clause (27) of Section 2 read as follows:

Section 2 Clause (21): "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7,500 kilograms;

Section 2 Clause (27): "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

18. Sections 3, 4 and 5 contained in Chapter II deal with the necessity for driving licence and mandate that:

3. Necessity for driving licence.-(1) No person shall drive a motor vehicle in any

public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motorcycle hired for his own use or rented under any scheme made under Sub-section (2) of Section 75 unless his driving licence specifically entitles him to do so. (2) The conditions subject to which Sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

4. Age limit in connection with driving of motor vehicles.-(1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of Section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

5. Responsibility of owners of motor vehicles for contravention of Sections 3 and 4.- No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle.

19. Cumulatively read the aforesaid provisions of law make it incumbent upon a person driving a motor vehicle in any public place to hold a valid and effective driving licence issued to him by the Competent Authority under Chapter II, authorizing him to drive the motor vehicle of the class specified in the licence. It is also clear that a light motor vehicle has been classified as a separate and distinct class of vehicle than a motorcycle, which is a two wheeled motor vehicle as opposed to a light motor vehicle which means a transport vehicle or omni bus the gross weight of either of which, or motor car or tractor or road roller, the unladen weight of any of which, does not exceed 7,500 kilograms. While Clause 21 defines a light motor vehicle, the definition of a motorcycle is as contained in Clause 27. Thus, the two categories of vehicles must be held to be separate and distinct. Even otherwise, it stands to reason that the expertise which is required to drive a motorcycle is quite different from the know-how required by a person for driving a light motor vehicle, that is to say, it cannot be assumed that every person who is competent to drive LMV, will be skilled in driving a two-wheeler as well.

20. Having arrived at the conclusion that the Respondent No. 2 was not holding a valid and effective driving licence, the only question which remains to be examined is whether there was a wilful breach on the part of the insured in allowing her son to drive the motorcycle owned and insured by her. R1W1 Mikul Bedi, who was the driver of the offending motorcycle, examined himself in the

witness box and stated that he was driving the motorcycle belonging to his mother for which he was holding an L.M.V. licence. The insured, who was the owner of the motor vehicle, did not examine herself to state whether there was no wilful breach of the policy condition pertaining to driving licence on her part. R3W2, an official from the concerned Transport Authority, who proved on record the driving licence of the Respondent No. 2 for driving LMV (NT), in the course of his statement, clearly stated that the Respondent No. 2 was not authorized to drive a motorcycle/two-wheeler under the driving licence held by him.

21. In view of the aforesaid evidence on record, the inescapable conclusion, in my opinion, is that the insured-owner must be held guilty of deliberate breach of contract between him and the Appellant. I am fortified in coming to the aforesaid conclusion from the decision of the Supreme Court rendered in the case of United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora and Others, . In the said case, the driver of the offending vehicle was a minor on the date of the accident and was not holding any driving licence. The insurer on the said ground denied its liability to reimburse the vehicle owner. The Tribunal while determining the issue of liability opined that the Insurance Company was not liable for payment of the amount of compensation to the claimants. However, an appeal filed against the said order was allowed by a learned Single Judge of the Punjab and Haryana High Court as follows:

After considering the rival contentions of the parties, I am of the opinion that the material point for determination is whether there was any breach of contract between the owner of the vehicle and the Insurance company. If the breach is committed on behalf of the vehicle, certainly the Insurance Company has a case. In order to bring the case within the mischief of "breach" it has to be proved that there was a willful default on the part of the insured. I have already stated above that no sane father would like to give the custody or keys of the vehicle to his minor son aged fourteen years, much less to the friend of the minor. Had Rakesh Kumar Arora parted the possession of the vehicle to his son he would have contemplated very easily that by doing so he would have incited the trouble. The Hon"ble Supreme Court 1987 while interpreting the expression "breach" came to the conclusion that if it is proved on the record that the owner of the vehicle had done every thing in his power to keep, honour, and fulfil the promise, in such a situation he cannot be held guilty of a deliberate breach. There is no evidence on the record to indicate that the owner of the vehicle parted the keys of the vehicle to his son deliberately or knowingly. If in the absence of the father the son takes the keys of the vehicle and drives the vehicle for fun and causes accident, it cannot be said that there was an express or implied consent on the part of the owner. The judgments which have been relied upon by the learned Counsel for the Insurance Company may not be any assistance to him for the simple reason that in the said judgments it has proved prima facie that there was a breach of contract on the part of the insured.

22. A Letters Patent Appeal having been filed there against, the Division Bench of

the High Court by reason of the impugned judgment dismissed the said appeal and upheld the decision of the learned Single Judge, relying upon some precedents viz. V. Mepheron Vs. Shiv Charan Singh, Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others,

23. The Supreme Court, allowing the appeal and setting aside the aforesaid judgment of the High Court of Punjab and Haryana (which has been heavily relied upon by the counsel for the Respondents No. 2 and 3), held as follows:

9. Section 4 of the Motor Vehicles Act prohibits driving of a vehicle by any person under the age of eighteen years in any public place. Section 5 of the Act imposes a statutory responsibility upon the owners of the motor vehicles not to cause or permit any person who does not satisfy the provisions of Sections 3 or 4 to drive the vehicle. 10. The vehicle in question admittedly was being driven by Karan Arora who was aged about fifteen years. The Tribunal, as noticed hereinbefore, in our opinion, rightly held that Karan Arora did not hold any valid licence on the date of accident, namely 5-2-1997.

11. The learned single Judge as also the Division Bench of the High Court did not put unto themselves a correct question of law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.

12. The High Court did not advert to itself the provisions of Sections 4 and 5 of the Motor Vehicles Act and thus misdirected itself in law.

13. This aspect of the matter has been considered by this Court in Oriental Insurance Co. Limited Vs. Prithvi Raj, wherein upon taking into consideration a large number of decisions, it was held that the Insurance Company was not liable, stating: (SCC p.349, para 9)

9. In the instant case, the State Commission has categorically found that the evidence on record clearly established that the licensing authority had not issued any license, as was claimed by the driver and the Respondent. The evidence of Shri A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner and Secretary, RTA, Hyderabad who produced the official records clearly established that no driving license was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross-examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard.

14. Yet again, this Court in National Insurance Co. Ltd. Vs. Kaushalaya Devi and Others, took the same view stating: (SCC pp.248-49, paras 10-11)

10. The provisions relating to the necessity of having a license to drive a vehicle are contained in Section 3, 4 and 10 of the Act. As various aspects of the said provisions vis-a-vis the liability of the Insurance Company to reimburse the owner in respect of a claim of a third party as provided in Section 149 thereof

have been dealt with in several decisions, it is not necessary for us to reiterate the same once over again. Suffice it to notice some of the precedents operating in the field.

11. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, this Court held: (SCC p.336, paras 88-89)

88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder thereof to drive the vehicle falling within that class or description.

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section.

It was furthermore observed: (SCC p.337, paras 90-91)

90. We have construed and determined the scope of Sub-clause (ii) of Sub-section (2)(a) of Section 149 of the Act, Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties. 91. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

The decision in Swaran Singh, however, was held to be not applicable in relation to the owner or a passenger of a vehicle which is insured.

24. In view of the aforesaid authoritative pronouncement of the Supreme Court, the impugned judgment cannot be sustained. Since however, notice in the appeal was issued to the Respondents No. 2 and 3 on the limited question as to whether the Appellant is entitled to recovery rights against the Respondents No. 2 and 3 and since no stay was granted by this Court to the Appellant in respect of the award amount, it is directed that the Appellant shall be entitled to recover the amount in question from the Respondents No. 2 and 3 in accordance with law.

25. The appeal is allowed accordingly.