
(2013) 10 DEL CK 0064
In the Delhi High Court
Case No : Mac. APP. 240 of 2012

Bajaj Allianz General Insurance Co. Ltd	APPELLANT
Vs	
Fiza Ali and Others	RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2)(a), 149(2)(b), 168

Citation : (2013) 10 DEL CK 0064

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajat Brar, for the Appellant; B.R. Sharma, for R1-2, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.

MAC. APP. 258/2012

1. The present appeal is directed against the award dated 22.12.2011 whereby the Id. Tribunal has granted compensation of Rs. 14,03,600/- with interest at the rate of 7.5 per cent per annum from the date of filing the claim petition till realization. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that there was a breach in terms of the policy as the license of the erring driver of the offending vehicle was found fake, therefore, the Id. Tribunal should have exonerated the appellant/Insurance Co. from any liability to pay the compensation.

2. The similar issue came up before this Court in the case of Santosh Chabra & Ors. Vs. Abhishek Gureja & Ors. in MAC Appeal No. 805/2010 decided on 04.10.2013, wherein this Court has observed as under:-

21. Law is settled on the issue of no licence, fake licence or invalid driving licence in the case of The New Indian Insurance Company Vs. Darshana Devi and

Others, . The offending vehicle at the time of accident was being driven by son of the owner of the vehicle, who was not holding any licence to drive the same. Ld. Tribunal, while awarding the compensation held that the amount shall be payable by the insurer initially, however, the insurer will be at liberty to recover the same from the owner of the offending vehicle. The award passed by Ld. Tribunal was challenged by the Insurance Company, same was affirmed by the High Court and also upheld by the Supreme Court.

22. In *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , wherein it is held as under:

The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.

23. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, while deciding the issue of driving licence, the Apex Court has held as under:

(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 wherefore would be on them.

In *V. Mepheron Vs. Shiv Charan Singh*, , the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.

24. In *Oriental Insurance Co. Ltd. and Others Vs. Rakesh Kumar and Others*, , the Coordinate Bench of this court in Para 44 has held as under:

44. (ii) Even when there is a willful breach of the terms of the policy u/s 149(2) (a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires the owner and driver to produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void u/s 149(2)(b) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is non est.

3. No doubt, the appellant/insurance company successfully proved that there was breach of terms and conditions of the policy. However, mere breach of the conditions of the policy would not entitle the insurance company to avoid its liability against the insured.

4. In the present case, the offending vehicle is admittedly an insured vehicle, limited to the terms of the policy of insurance, therefore, the insurance company is duty bound to take over the contractual liability of the assured and pay the sum awarded to the claimants by the Ld. Tribunal.

5. Moreover, the provisions of sub-section 4 and 5 of the Section 149 of Motor Vehicles Act, 1988 may be considered as to the liability of the insurer to satisfy the decree at the first instance.

6. Admittedly, recovery rights have been granted in favour of the appellant.

7. In addition, 50% of the award amount has already been released in favour of the respondents/claimants vide order dated 29.05.2012.

8. Keeping in view the above discussion and settled position of law, I do not find any discrepancy in the award dated 22.12.2011 on the issue raised above, therefore, the instant appeal is dismissed on this issue.

9. Second ground argued by the counsel of the appellant is that the claimants could not prove the employment of the deceased, however, Id. Tribunal has assessed the monthly income of Rs. 7,020/- as per minimum wages applicable to a Graduate at the time of the accident. Learned counsel submits that the Tribunal ought not to have awarded the future prospects.

10. To support his contentions, the learned counsel has relied upon the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which has been affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr., delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013.

11. On the issue of future prospects, this Court has recently decided the case bearing MAC. A. No. 846/2011 on 30.09.2013 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors., wherein it is held as under:-

26. While considering the case of Santosh Devi, the Apex Court did not feel to refer the matter to a Larger Bench. Therefore, it can be concluded that there is no contradictions in the finding of Sarla Verma and Santosh Devi, in turn the Apex Court extended the scope and ambit of Sarla Verma through Santosh Devi.

27. In view of above, this court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon"ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self-employment/fixed wages this court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh.

12. Keeping in view the above discussion, I found that there is no substantial ground in the instant appeal. The same is, therefore, dismissed.

13. Vide order dated 06.03.2012, this Court stayed the execution of the impugned award subject to appellant's/Insurance Company's depositing entire awarded amount with upto date interest with the Registrar General of this Court and thereafter, vide order dated 29.05.2012, 50% of the awarded amount was released in favour of the respondent Nos. 1 and 2.

14. Consequently, the Registrar General of this Court is directed to release the balance compensation amount with upto date interest accrued thereon in favour of the respondent Nos. 1 and 2 in terms of the award dated 22.12.2011 on taking necessary steps by them.

15. Statutory deposit of Rs. 25,000/- shall be released in favour of the appellant/ Insurance Company. In view of the above, the instant appeal stands disposed of.

CM No. 4199/2012 (for stay)

With the disposal of the appeal itself, this application has become infructuous. The same is accordingly dismissed.