(2011) 12 DEL CK 0293

In the Delhi High Court

Case No : MAC App. 647 of 2011

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Kalawati and Others RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2A), 4, 7

Citation : (2011) 12 DEL CK 0293

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

Bench : Single Bench

Advocate : Joy Basu, for the Appellant; Vibha Mahajan Seth, Advocate for respondents No. 1 to 4 and Mr. Avadh Kaushik, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—Bajaj Allianz General Insurance Company Limited, the Appellant impugns the award dated 28.02.2011 passed by the Motor Accident Claims Tribunal (the Tribunal) on the ground that the Appellant Insurance Company was able to demonstrate before the Tribunal that the driving licence held by Respondent No.5 (Joginder Kumar) driver of the vehicle was fake, yet it was fasten with the liability to pay the compensation. No right of recovery of the compensation paid was granted to the Appellant. Since there is no challenge to the quantum of compensation, my task is a little easier.

2. A driving licence Ex.R3W1/6 of Respondent Joginder Kumar was proved before the Tribunal. The contention raised on behalf of the Appellant Insurance Company is that it is borne out from the verification report that the driver''s date of birth was 11.07.1978. Thus on the date of the issuance of the licence in the year 1994, the driver could have been just about 16 years of age. He, according to the learned counsel for the Appellant, was not entitled to hold a driving licence even for a non commercial vehicle. It is urged that once it is found that the initial driving licence was fake, its renewal from time to time will not validate the licence. It is contended that although the Insurance Company is under obligation

to prove that there was breach of condition of policy as the driver did not possess a valid driving licence as contained in sub Section 2(A) (ii) of Section 149 of the Motor Vehicles Act (the Act), yet in this case, it was amply proved by the Appellant that the owner of the vehicle (Respondent No.6) did not take adequate steps to verify the genuineness of the licence otherwise he would have known that Respondent No.5 was not even competent to hold a licence in the year 1994.

3. The law is settled that where originally the licence is fake its renewal cannot cure the inherent defect. (National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and Premkumari and Others Vs. Prahlad Dev and Others,).

4. As per Section 4 of the Act, a person is not entitled to drive a motor vehicle in any public place unless he is of the age of 18 years. As per Section 7 of the Act, a person is not entitled to have a learner''s licence to drive a transport vehicle unless he held a driving licence to drive a light motor vehicle for atleast one year. There is proviso to Section 4 of the Act which enables a person to drive a motorcycle with engine capacity not exceeding 50CC after attaining the age of 16 years. Thus, there is no embargo that a person less than 18 years of age cannot possess any licence whatsoever.

5. Turning to the facts of this case, a verification report was obtained by the Appellant through its investigator Mr. Amit Verma. There is not even a whisper in the report that the driving licence right from the inception in the year 1994 till the end i.e. 21.10.2010 was invalid.

6. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , it was held that to avoid its liability towards the insured insurer has to prove that the insured was guilty of negligence and fail to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving negligence on the owner''s part. On the other hand, there is ample evidence to show that the owner i.e. Respondent No.6 (Daljeet Singh) exercised due care to ensure that the vehicle is driven by a duly licenced driver. He entered the witness box as R2W1 and testified that he checked the driving licence of the driver prior to his appointment. He stated that before he appointed Respondent No.1 (Respondent No.5 herein), he checked his driving skills. He denied the suggestion that the driving licence held by the driver was not valid as on the date of the accident.

7. In the case of United India Insurance Company Ltd. Vs. Lehru and Others, , it was held by the Supreme Court that owner of a vehicle while hiring a driver is not expected to check the records of the licencing officer to satisfy himself that the driving licence is genuine. If the driver produces a driving licence which on the face of it looks genuine, the owner cannot said to be negligent. I would extract Para 20 of the report hereunder:-

20. When an owner is hiring a driver he will therefore have to check whether the

driver was a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he find that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO''s, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be above of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skiandia''s Sohan Lal Passi''s and Kamla''s cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

8. The Appellant wants this Court to believe that the licence was fake simply on the ground that the driver could be between 16 to 17 years of age on the date the licence was issued in the year 1994.

9. The accident took place on 04.08.2010 almost 15 years after the issuance of the initial licence. As stated earlier, the driver could validly hold a licence for a motorcycle upto the capacity of 50CC on the date this licence was issued. It is a common knowledge that initially a licence for one kind of vehicle is obtained by a driver and addition/endorsement for other vehicles is made from time to time. Thus, in the absence of any evidence produced by the Appellant that the driving licence initially issued was not genuine, the Appellant could not aver that the licence initially issued was fake.

10. The Appeal is devoid of any merit; the same is accordingly dismissed. No costs.

11. Pending applications also stands disposed of.

