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(2014) 02 DEL CK 0191

In the Delhi High Court

Case No : Mac. APP. 708 of 2012

City Water Supplier APPELLANT

Vs

The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2) 66

Citation : (2014) 02 DEL CK 0191

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.C. Singhal, for the Appellant; Amit Kumar Singh and Ms. K. Enatoli, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The present appeal has been preferred against the impugned award dated 14.05.2012, whereby the learned Tribunal granted compensation for a sum of Rs. 5,06,100/- with interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount. The appellant is the owner of the offending vehicle and is aggrieved with the direction passed by the ld. Tribunal that the permit Ex. R2W1/2 was only for State of Haryana, however, there was no permit to ply the offending vehicle in Delhi. Accordingly, recovery rights were granted in favour of the respondent No. 1/Insurance Company and against the appellant. Hence, the present appeal.

2. Learned counsel appearing on behalf of the appellant argued that the owner and the driver of the offending vehicle did not appear before the Tribunal, therefore, they were proceeded ex-parte. The respondent/Insurance Company had filed written statement wherein in Para 2 it is stated that the driver of the offending vehicle was not holding a valid or effective driving licence or was otherwise disqualified from holding the same, thus, the Insurance Company will not be liable to pay any compensation.

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3. Learned counsel submitted that if after investigation other relevant facts came to the knowledge of the respondent no. 1/insurance company, it reserves its right to file the amended written statement and sought leave to take such other defences as are available u/s 149(2) of the Motor Vehicles Act, 1988.

4. Learned counsel for the appellants further submitted that in the Insurance Policy (Annexure-4) against the column "Limitation as to use" it is mentioned that the policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988.

5. Ld. Counsel argued that the non-compliance of the statutory provisions alone cannot be a ground for giving recovery rights.

6. On the other hand, learned counsel appearing on behalf of the respondent No. 1/Insurance Company submitted that the appellant examined Shri Jagbir Singh, its sole Proprietor, as R2W1, and proved original insurance policy as Ex. R2W1/1 and permit issued by the Government of Haryana effective from 21.06.2007 to 12.06.2012 as Ex. R2W1/2. As per the aforesaid permit, the route or area of permit was Haryana State only.

7. He further submitted that on 10.06.2007 at about 10.00 a.m. the offending vehicle, which is a water tanker No. HR-26-GA0884 belonging to the appellant, reached at Sector 16A for supply of water to the local residents. The driver of the offending vehicle parked the vehicle at Sector 16A, 60 feet, main road. At that time, the deceased along with his uncle Banwari Lal had also gone to take water from the said vehicle and when the deceased started taking water from the offending vehicle, suddenly, the driver of the offending vehicle without blowing any horn or giving any signal or without taking any precaution moved the said tanker at a high speed, rashly and negligently, as a result of which the deceased was crushed under the left side rear wheel of the offending vehicle.

8. Ld. Counsel further submitted that there was no permit to ply the offending vehicle in Delhi, thus, violated the terms and conditions of the policy, therefore, the ld. Tribunal granted recovery rights against the appellant.

9. To strengthen his arguments, ld. Counsel relied upon the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, wherein the Apex Court has held as under:-

12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-?-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore,

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not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer...

10. I have heard the learned counsel for the parties.

11. It is legally significant to note the findings of the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, wherein it is held as under:

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

(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.

12. In view of the above dictum in Swarn Singh (Supra), the alleged deviations in the permit are not sufficient to exonerate from the liability. The stipulations in the insurance policy are interpreted on the basis of two concepts: rule of main purpose and fundamental breach. Therefore, there is no wilful breach in terms of the insurance policy.

13. A similar issue came before this Court in the case of New India Assurance Co. Ltd. Vs. Ram Partap & Ors. MAC. APP. 960/2011. The facts of the case in hand are similar to this case, therefore, keeping in view the decision of this Court in the above case; and also the view taken by the Apex Court in Swarn Singh (Supra), non-permit to ply the vehicle in Delhi cannot be the basis for grant of recovery rights because the said failure is not fundamental in nature, whereas it is otherwise, as discussed above.

14. In view of the above, I am of the considered opinion that the ld. Tribunal has wrongly granted recovery rights against the appellant. The liability lies on the insurer, i.e., the Insurance Company, to pay the compensation to the claimants.

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15. Accordingly, the present appeal is allowed. Statutory amount, if any, be released in favour of the appellant.

CM. No. 11530/2012 (stay)

With the dismissal of the appeal itself, instant application has become infructuous and dismissed as infructuous.

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