(2012) 03 DEL CK 0661

In the Delhi High Court

Case No : MAC. APP. No. 16 of 2009

Delhi Transport Corportion APPELLANT

Vs

Shobha Rani and Others RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 173

Citation : (2013) ACJ 2710

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

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; Pradeep Gaur and Mr. Amit Gaur and Mr. Shashank Sharma, Advocates for the Respondent No. 3 Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Delhi Transport Corporation impugns a judgment dated 03.10.2008 whereby while awarding a compensation of Rs. 5,46,508/- in favour of the Respondents No. 1 to 4, the Claims Tribunal granted recovery rights to the National Insurance Company Ltd. (the Third Respondent) on the ground that Yashpal Malik, the driver of the offending bus was holding a fake licence Ex. R1W1/2.

2. It is well settled that the insurer is under obligation to prove that the insured committed willful breach of the condition of policy by failing to exercise reasonable care or was negligent in entrusting the vehicle to a driver who possessed a fake licence. If the insured bonafidely believed the licence to be genuine, the insurer would not be allowed to avoid its duty to indemnify the insured.

3. In the instant case, the accident took place on 31.10.2004. The Claim Petition was filed by the Respondents No. 1 to 4 on 23.12.2004. The Appellant and its driver (who were the Respondents No. 1 & 2 before the Claims Tribunal) filed a

joint written statement on 22.07.2005 admitting the accident but denying the negligence. They took the plea that Yashpal Malik (the First Respondent before the Claims Tribunal) possessed a valid driving licence at the time of the accident.

4. The Appellant, who was the Third Respondent before the Claims Tribunal, did not controvert the averments made by the Appellant and the driver in para 2 of the preliminary objection. In the written statement regarding validity of the driving licence a vague and general plea was taken that unless it was proved that the driver possessed a valid driving licence to drive the vehicle involved in the accident, no liability could be imposed on the Appellant.

5. A perusal of the Trial Court record shows that a certified copy of the report u/s 173 of the Code of Criminal Procedure filed before the Court of learned Metropolitan Magistrate against Yashpal Malik dated 29.11.2004 was placed on record (Claims Tribunal) on 13.07.2006. The report shows that Yashpal Malik''s Driving Licence No. C08102002241426 valid upto 22.10.2005 (Ex. PW1/5) was seized by a Memo Ex. PW1/4 prepared on 01.11.2004 by the Investigating Officer. The officer in-charge of the Police Station or the Investigating Officer of the case did not challan the driver for driving the vehicle without a licence. In other words, on an apparent look of the licence, they were convinced about its genuineness.

6. The driver filed his affidavit Ex. R1W1/A testifying that he did possess a valid driving licence Ex. RW1/2. The driver was cross-examined on 29.10.2007 wherein a suggestion was given that the driving licence was not issued by the Transport Authority, Ashok Vihar. No suggestion was given to the driver that the licence was fake and more importantly that he was aware that the licence was fake. of course, R3W1''s testimony (recorded on 17.04.2008) reveals the licence to be fake as the same was not issued by their authority. The circumstances proved on record show that the driver Yashpal Malik and the Investigating Officer were misled and were not aware that the driving licence from its very look was fake. No question was put as to the manner in which the driver got the licence issued, imputing knowledge to him about the licence being fake. In these circumstances, the DTC authorities who employed the driver obviously after taking a test (this being a public sector undertaking), cannot be said to have failed to exercise reasonable care that the vehicle is driven by a person holding a valid driving licence.

7. The Respondent Insurance Company has failed to discharge the initial onus of proving willful breach of the condition of the policy. The Claims Tribunal, thus erred in granting recovery rights against the Appellant.

8. The Appeal, therefore, has to succeed. The impugned order so far as it grants recovery rights against the Appellant is set aside.

9. The Appeal is allowed in above terms.

10. No costs.

