(2012) 10 DEL CK 0015

In the Delhi High Court

Case No : Mac. App. 837 of 2011

Future General India Insurance Co. Ltd. APPELLANT

Vs

Mohd. Ibrahim and Others RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 11, 14, 149(2), 149(2)(a)(i)(ii)

Citation : (2012) 10 DEL CK 0015

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

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Navneet Goyal, with Ms. Suman N. Rawat, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Future General India Insurance Company Limited takes exception to a judgment dated 11.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 1,00,618/-, the Claims Tribunal rejected the Appellant''s plea of breach of the terms and conditions of the Insurance Policy and made the Appellant liable to pay the compensation. The sole contention raised by the learned counsel for the Appellant is that even if, the Appellant was not exonerated of its liability to pay the compensation, at least recovery rights ought to have been granted to the Appellant as it was proved that the Respondent No. 2 Lal Babu Dass driver of the vehicle possessed a licence to drive LMV (NT) and motorcycle whereas the vehicle No. DL-1LL-7602 involved in the accident was a transport vehicle being a goods vehicle.

2. While dealing with the issue of liability, the Claims Tribunal held as under:-

Respondent no. 3 has stated that the offending vehicle was a commercial vehicle but respondent no. 1 was holding driving license for LMV (non transport) only at the time of accident in question therefore, they are not liable. Statement of

R3W2 has been recorded where he has stated that driving license of respondent no. 1 was valid for LMV (non transport) and Motorcycle only and was not authorized to drive goods carrying vehicle i.e. commercial vehicle. As per RC of the offending vehicle issued on 12/11/09 it was a light goods vehicle with unladen weight of 470 kg. only. Insurance policy was also issued by respondent no. 3 for goods carrying Motorized 3 Wheelers and Motorized Pedal Cycles Pvt. Carrier.

Light goods vehicle has however, not been separately defined in the Act. As per Form 6 i.e. Form of driving license of the Central Motor Vehicle Rules, 1989 the entry ''Medium Goods Vehicle'' and ''Heavy Goods Vehicle'' do not exist and instead ''Transport Vehicle'' alongwith ''LMV'' are the relevant entries.

The Hon''ble Supreme Court in IV National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, has held that as per section 2 (21) MV Act, light motor vehicle covers light goods vehicle provided its laden weight does not exceed 7500 kg.

The offending vehicle therefore, was a light goods vehicle with weight of 470 kg. only and is therefore, covered under the definition of light motor vehicle for which respondent no. 1 had valid driving license.

3. It is not in dispute that Respondent No. 2 possessed a driving licence to drive only LMV (NT) and a motorcycle. It is urged by the learned counsel for the Appellant that on the strength of a non-transport licence for LMV Respondent No. 2, the driver of the delivery van, was not authorised to drive the same on the date of the accident which occurred on 17.09.2010.

4. Learned counsel for the First Respondent, however, urges that since the delivery van was LMV, Respondent No. 2 was competent to drive the same on the basis of the licence for LMV (NT) possessed by him.

5. Section 10 of the Motor Vehicles Act, 1988 (the Act) deals with the Form and contents of licences to drive. Section 11 of the Act deals with additions to driving licence to drive any other class or description of vehicle in addition to the one which the holder is competent to drive. Section 14 of the Act deals with the currency of licences to drive motor vehicles. Sections 10, 11 and 14 of the Act are extracted hereunder:-

10. Form and contents of licences to drive.

(1) Every learner''s licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

1[(e) transport vehicle;]

(i) road-roller;

(j) motor vehicle of a specified description.

11. Additions to driving licence.

(1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such, documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

(2) Subject to such rules as may be prescribed by the Central Government, the provisions of section 9 shall apply to an application under this section as if the said application was for the grant of a licence under that section to drive the class or description of motor vehicles which the applicant desires to be added to his licence.

14. Currency of licences to drive motor vehicles.

(1) A learner''s licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of 3[fifty years] on the date of issue or, as the case may be, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of [fifty years], whichever is earlier;

[(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:]

Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry.

6. Thus, from Section 10 of the Act it will be seen that even a learner''s licence has to be in respect of the class of vehicle for which a person wants to have a regular licence. Similarly, Section 11 of the Act lays down that any person holding a driving licence to drive any class of motor vehicle can apply to the Licensing Authority for addition of such other class or description of motor vehicle as he has not been disqualified from holding. Section 14 of the Act lays down that a learner''s licence is effective for a period of six months, a licence to drive a transport vehicle is effective for a period of three years, a licence to drive a transport vehicle carrying hazardous goods will be effective for one year and the other licences would be valid for 20 years from the date of issue/date of renewal or until the person applying for such licence/applying for renewal attains the age of 50 years.

7. ''Transport vehicle'' has been defined u/s 2(47) of the Act to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

8. Similarly, ''Public Service Vehicle'' is defined u/s 2(35) of the Act to mean any motor vehicle used for the carriage of passengers for hire or reward including a maxicab, a motorcab, a contract carriage and a stage carriage.

9. Further, ''Goods Carriage'' is defined u/s 2(14) of the Act to mean any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

10. Similarly, ''Heavy Goods Vehicle'', ''Light Motor Vehicle'' and ''Medium Goods Vehicle'' have been defined under Sections 2(16), 2(21) and 2(23) of the Act respectively, which are extracted hereunder:-

2 (16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

2. (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 [7500] kilograms;

2. (23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

11. Thus, any transport vehicle or omnibus whose gross vehicle weight or a motor car or a tractor or a road roller, the unladen weight of any of which does not exceed 7500 kgs., is a light motor vehicle.

12. Therefore, it is important to note that a motor car, whose unladen weight does not exceed 7500 kgs., is a light motor vehicle. If that very motor car is used for hire or reward then it becomes a public service vehicle as laid down u/s 2(35) of the Act and a transport vehicle as defined u/s 2(47). Similarly, every goods carriage whether used for public or private purpose would be a transport vehicle.

13. A conjoint reading of Sections 10, 11 and 14 of the Act will show that a person driving a vehicle must possess a licence to drive that class of vehicle which he intends to drive. If he proposes to drive any other vehicle than the one for which he/she possesses any effective driving licence he is to seek an addition to his/her driving licence. In other words, if a person wants to drive only a motor car whose unladen weight does not exceeds 7500 kgs., he needs to have a licence to drive a light motor vehicle only. At the same time, if a person wants to drive a motor car for hire and reward then that light motor vehicle will become a public service vehicle as well and a holder would not be competent to drive the motor car for hire and reward, that is, a maxicab or a motorcab or a taxi unless he possesses a licence to drive a transport vehicle for LMV. Similarly, every goods carriage is included in the definition of transport vehicle. Thus, the holder of a licence must possess a licence to drive a transport vehicle of the category of the goods vehicle whose gross vehicle weight does not exceed 7500 kgs., then he must possess a licence to drive a light motor vehicle of the category of transport vehicle. If he wants to drive a goods vehicle whose gross vehicle weight is above 7500 kgs. or 12,000 kgs., then he must possess a licence to drive a medium motor vehicle of the category of transport vehicle and heavy motor vehicle of the category of transport vehicle respectively. At the same time, a person possessing a licence to drive a heavy motor vehicle would be competent to drive a medium motor vehicle and light motor vehicle of the category of transport vehicle.

14. A reference may be made to the report of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, where the Supreme Court emphasized that the driver must possess the licence for the type of vehicle which is involved in the accident. Para 89 of the report is extracted hereunder:-

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. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods

carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

15. In Natwar Parikh and Co. Ltd. Vs. State of Karnataka and Others, , a three Judge Bench of the Supreme Court held that even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle the tractor trolley would constitute a goods vehicle u/s 2(14) and would consequently be a transport vehicle u/s 2(47). Para 24 of the report is extracted hereunder:-

24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined u/s 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" u/s 2(28). Similarly, the word "tractor" is defined in section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforestated definitions u/s 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" u/s 2(14) and consequently, a "transport vehicle" u/s 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls u/s 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport

vehicle" u/s 2(47) of the M.V. Act, 1988.

16. Subsequently, in New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, ; the Supreme Court differentiated between a transport vehicle and a non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a light goods vehicle. It was further held that a person must possess the licence for the class of vehicle involved in the accident.

17. A similar question arose for consideration in National Insurance Co. Ltd. Vs. Kusum Rai and Others, ; where the driver possessed a licence for driving LMV (NT) and the vehicle driven by him was a taxi which was a commercial vehicle. The Supreme Court held that a taxi (a commercial vehicle) could not be driven on the basis of an LMV (NT) licence. Para 11 of the report is extracted hereunder:-

11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.

18. I have before me the testimony of Satish Chander (R3W2), Record Clerk, Licensing Authority as well as the driving licence possessed by the driver. The driving licence was issued on 10.05.2010 and it was valid upto 09.05.2030. I have earlier extracted the provisions of Section 14 of the Act which clearly lays down that a licence to drive a transport vehicle shall be effective for a period of three years only. In the instant case the driving licence as well as R3W2''s testimony clearly indicates that the licence was valid for 20 years. In other words, the licence was only for a non transport vehicle.

19. Since the Second Respondent possessed a licence to drive LMV (NT), he was therefore not competent to drive the delivery van No. DL-1LL-7602 involved in the accident. It is no where the case of Respondents No. 2 and 3 that the accident was caused on account of some mechanical failure or any other similar cause, having no nexus with the driver not possessing requisite type of licence. Thus, the Insurer is entitled to avoid the liability.

20. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by three Judge Bench report in Sohan Lal Passi Vs. P. Sesh Reddy and others, . As per Section 149(2) of the Motor Vehicles Act (the Act), an insurer is entitled to defend the action on the grounds as mentioned u/s 149(2)(a)(i)(ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the condition of the policy. It is well settled that the breach must be conscious and willful. Even if a conscious breach on the part of

the insured is established, still the insurer has a statutory liability to pay the compensation to the third party and will simply have the right to recover the same from the insured/tortfeasor either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court. The question of statutory liability to pay the compensation was discussed in detail by a two Judge Bench of the Supreme Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The three Judge Bench of the Supreme Court in Sohan Lal Passi analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in Skandia. In New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , the Supreme Court referred to the decision of the two Judge Bench in Skandia, the three Judge Bench decision in Sohan Lal Passi and held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, . Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the legislature that a motor

vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become suffers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the raison d''etre for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi Vs. P. Sesh Reddy and others, .

25. The position can be summed up thus:

The insurer and the 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.........

21. Again in United India Insurance Company Ltd. Vs. Lehru and Others, , in para 18 of the report the Supreme Court referred to the decision in Skandia, Sohan Lal Passi and Kamla and held that even where it is proved that there was a conscious or willful breach as provided u/s 149(2)(a)(ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance..........

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20. ....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 noticed 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 Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

22. The three Judge Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party is statutory. It approved the decision in Sohan Lal Passi, Kamla and Lehru. Paras 73 and 105 of the report are extracted hereunder:

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

23. This Court in Oriental Insurance Co. Ltd. and Others Vs. Rakesh Kumar and Others, noticed some divergence of opinion in National Insurance Co. Ltd. Vs. Kusum Rai and Others, , National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, ; Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, and Premkumari and Others Vs. Prahlad Dev and Others, and held that in view of the three Judge Bench decision in Sohan Lal Passi(supra) and Swaran Singh, the liability of the Insurance Company vis-a-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.

24. In the circumstances, the Insurance Company is under obligation to satisfy the award in the first instance and to recover the amount of compensation from the driver and the owner of the offending vehicle (Respondents No. 2 and 3) in execution of this very judgment without having recourse to independent civil proceedings.

25. In the result, the amount of compensation deposited by the Appellant Insurance Company shall be released in favour of the First Respondent in terms of the order passed by the Claims Tribunal and it would be entitled to recover the same from Respondents No. 2 and 3.

26. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

27. The Appeal is allowed in above terms. Pending Applications also stand disposed of.

