

(2005) 05 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 199 of 2004

Lehri Bai (Smt.) and Another

APPELLANT

Vs

Smt. Meera Kunwar and Others

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 147(2), 147(3)

Citation : (2005) 4 RCR(Civil) 566 : (2005) 4 RCR(Criminal) 721 : (2005) 3 RLW 2176

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Sachin Acharya, for the Appellant; Anil Bhachhawat, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The only question involved in this appeal is that whether the Motor Accident Claims Tribunal, Rajsamand in Motor Accident Claims Case No. 376/2001 by its award dated 24th Oct., 2002 has wrongly exonerated the respondent-Insurance Company from liability under the insurance policy, which was obtained by the appellants.

3. The facts, which are not in dispute are that the driver of the vehicle was holding valid driving licence and that expired on 27.2.2000. The accident occurred on 28.2.2001 at 8:00 AM after expiry of the driving licence of the driver. The driving licence was renewed by the driver on the same day, i.e., on 28.2.2001, meaning thereby the license was renewed after the occurrence of the accident. The Tribunal held that Insurance Company is not liable to reimburse the claim amount to the owner of the vehicle because at the time of accident, the driver was not holding the valid driving licence.

4. Learned Counsel for the appellant submits that the driver was holding the

driving licence and even if he was not having a renewed driving licence with him at the time of accident on 28.2.2001 and his driving licence was renewed by the competent authority on 28.2.2001, then he can be treated to be a person holding a driving licence not renewed, but cannot be said to be a person, who has never been issued licence to drive the vehicle on public road by the competent authority under the Motor Vehicles Act, 1988. It is also submitted that the driver of the vehicle cannot be said to be a person declared disqualified for holding or obtaining a driving licence during the period of his disqualification, therefore, the Tribunal has committed serious error of law in exonerating the Insurance Company from liability of award amount.

5. Learned Counsel for the appellant relied upon the judgment of this Court delivered in the case of Laxminarain v. Smt. Sona Devi and Anr., reported in 2003 (3) 1034 (sic) wherein the word "duly licensed and effective licence" has been considered in detail. Learned Counsel for the appellant also relied upon the judgment of the Karnataka High Court delivered in the case of K.G. Srinivasamurthy Vs. Habib Khathun and Others, and the Full Bench judgment of the Kerala High Court delivered in the case of Oriental Insurance Co. Ltd. Vs. Paulose, and recent judgment of the Hon''ble Apex Court delivered in the case of National Insurance Co. Ltd. v. Swaran Singh and Ors., reported in AIR 2004 SCW 663.

6. Learned Counsel for the respondent-Oriental Insurance Company vehemently submitted that the provision of Section 149 deals with the matter relating to the third party claim. The Hon''ble Supreme Court in the case of Swaran Singh & Ors. (supra), clearly held that the condition incorporated in the policy can be given effect when the matter is in between the insured and insurer and in the Motor Accident Claims Tribunal, the dispute with respect to the third party claim are not, only the matter, which can be adjudicated, but the dispute between the insured and insurer are also required to be adjudicated in the same proceedings by the Motor Accident Claims Tribunal. It is also submitted that the word "duly licensed and effective licence" as used in Section 149(2) and Section 3 of the Act of 1988 were also considered by the Hon''ble Supreme Court in the Swaran Singh's case (supra), and in view of the above, the Tribunal was right in exonerating the respondent-insurance company from the claim liability because even if Insurance Company is liable to pay award amount to third party, still if there is breach of condition by the insured, the Insurance Company can recover the said award amount from the insured in this very accident.

7. I considered the submissions of learned Counsel for the parties.

8. It is clear from the Sub-clause (a) of Sub-section (2) of Section 149 that the insurance company can claim exoneration from the liability in case there has been breach of specified condition of the policy, being one of the conditions referred in Sub-clause (a) of Sub-section (2) of Section 149. The words "being one of the following conditions" in Sub-clause (a) of Sub-section (2) of Section 149 have their, own importance because they make the defence of the Insurance

Company limited. The words have been used in Sub-clause (a) of Sub-section (2) of Section 149 clearly reveal that the Insurance Company can claim exoneration of its liability when the vehicle is driven by a driver who is not duly licensed. The word "duly licensed" has been used despite the fact that in Sub-section (1) of Section 3, the word has been used "effective driving licence", which provides that no one shall drive a motor vehicle on any public place unless he holds an "effective" driving licence.

9. Therefore, a plain reading of Sub-section (1) of Section 3 of the Motor Vehicle Act, 1988 makes it clear that for driving a vehicle on public road, one is required to have "effective driving licence". In case one drives the motor vehicle without having "effective" driving licence, then he can be punished under the various provisions of the Motor Vehicle Act. But inspite of having words "effective" driving licence in Section 3 of the Act of 1988, the words "duly licensed" have been used in Section 149(2)(ii). The words "duly licensed" as used in Section 149(2)(ii) are read with rest of the same provision of Section 149(2)(ii) it appears that different words have been used in the same Act purposefully. Second part of Section 149(2)(ii) excludes the liability of drivers, who have been held "disqualified from holding or obtaining driving licence during the period of disqualification". Therefore, the complete reading of Section 149(2)(ii) makes it clear that a person who is duly licensed to drive the motor vehicle on road (may not holding "effective" driving licence and who has not incurred disqualification for holding driving licence within that period of not having effective driving licence) caused accident while driving a motor vehicle, his liability is the insurer on satisfying other conditions. The term "duly licensed" denotes who has been given licence any time before. Not duly licensed means, who has never been given licence to drive vehicle. A person who got the licence once and was disqualified for holding or obtaining licence for any particular period then that person though is a duly licence person (as he had a licence to drive) but by operation of that disqualification, the insurers have been permitted to avoid any liability of that period only by taking help of Section 149(2)(ii) so far as insured is concerned.

10. The Hon"ble Supreme Court in the Swaran Singh's case (supra), clearly held that word "duly licensed" used in Section 149(2)(ii) cannot be given meaning of effective licence used in Section 3, therefore, even if there is a condition in the insurance policy of having a effective driving license for claiming the benefit under the insurance policy, it cannot be read as a condition binding between the insured and the insurer because the words used in Sub-clause (1) of Sub-section (2) of Section 149 of the Act of 1988 contain specific language, which excludes all other defenses for the insurance company and the excluding words are given in Sub-clause (1) are "being one of the following conditions" so far as it is relating to claim of third party is concerned.

11. Apart from above, it will be worthwhile to mention here that a person once given a licence to drive a vehicle on road can get the renewal of the licence u/s

15 and as per Sub-clause (1) of Section 15 in case a licence is renewed within a period of 30 days then the renewal should be made from the date of expiry of the licence. However, the proviso provides that in case application for renewal of a licence is submitted after more than 30 days then the license shall be renewed with effect from the date of its renewal. Therefore, in this case, the licence could have been renewed from 28.2.2001 from which the accident occurred if driver would have applied within one month from the date of its expiry. In this case, since driver obtained renewal of licence after expiry of 30 days from validity period of licence, therefore, his licence became effective licence from the date of renewal, still he cannot be a person "not duly licensed".

12. Disqualified from holding a driving licence is a person who has been so held u/s 19 of the Motor Vehicle Act, 1988 by the licensing authority or a person who has been so declared by the Court u/s 20 of the above Act. The driver of the vehicle in this case has not been declared disqualified from holding driving licence, either by the licensing authority or the Court for the period when the same was not renewed. It has not been shown by the insurer that during that period when the licence was not remained renewed, the driver could not have obtained renewals of licence or could not have obtained the driving licence, which two eventualities are the defence permissible u/s 149(2)(ii) for the insurer under the Act of 1988. Therefore, in view of the above also, it is clear from the facts of the case that the driver was holding the driving licence prior to the occurrence of the accident and his licence was renewed just after the accident, therefore, he was not a driver disqualified from holding or obtaining the driving licence.

13. According to learned Counsel for the respondent the liabilities of insurer under the insurance policy are not subject to Section 149 of the Act of 1988, but are saved as per term of policy by Section 147 and, therefore, in view of the language used in Section 147, it is clear that the Insurance Company is not under obligation to take all liabilities of a person, who has committed any breach of condition of policy. According to learned Counsel for the respondent the benefits, which are available u/s 149 of the Act of 1988 to the insured are not available to owner of the vehicle insured under any provision of law because of the simple reason that the insurance contract is contract between the parties in which both may voluntarily agree for the terms. Therefore, all owners' claim cannot be considered to be a claim at par with the claim of the third party claim. Even limited defence are available to the insurer so far as defence against the third party, but there cannot be limited defence against insured.

14. To appreciate the arguments of learned Counsel for the respondent Insurance Company, it will be worthwhile to look into the Sections 149 and 147 of the Motor Vehicles Act, 1988. The Section 149(2)(ii) of the Act of 1988 provides for the liability of the insurer to satisfy the judgments and awards against the persons insured in respect of third party risks. Though title of Section 149 is wide enough to cover the liabilities of the insured in respect of third party risk, but in Sub-section (1) of Section 149 it has been provided as under:-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. (1) it, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

15. Therefore, as per Sub-section (1) of Section 149, the Insurance Company is under obligation to satisfy the judgments and awards passed against the insured even if the insurer is entitled to avoid or cancel the policy. Not only this, but even in cases, where the policy has been avoided or cancelled by the insured even then the Insurance Company is liable to satisfy the liability of the insured by paying it to the third party. However, as per Sub-section (5) of Section 149, right of the Insurance Company to recover the said amount for which the Insurance Company is not liable and has paid the amount to the third party has been recognized by specific statutory provision by enacting Sub-section (5) of Section 149. Therefore, so far as liability of Insurance Company to satisfy the award of third party is concerned, the Insurance Company cannot resist.

16. The question, which has been raised by learned Counsel for the respondent by taking help of Section 147 is that whether the insurer can incorporate a condition for the purpose of excluding liability of the insurer otherwise than as permissible under the Act of 1988. According to learned Counsel for the respondent the contractual conditions between the insurer and insured are binding between the insurer and insured and when the insurance company has used the word "effective driving licence" as a condition precedent for undertaking the liability of the award then the insured who is contracting party cannot avoid the condition of contract and say that, that condition of exclusion of a person, who had no effective driving licence at the time of accident, cannot be enforced by the insurer.

17. A bare reading of Chapter XI of the Motor Vehicles Act, 1988 makes it clear that all provisions with respect to the contract between the insurer and insured and liabilities under the policy have been given statutory recognition. Section 146 of the Act of 1988 provides for necessity for insurance for all the passengers or motor vehicle to be used on public places. The benefit of policy goes to the third party because of statutory requirement of policy irrespective of the fact that third party has not contributed for the coverage of the risk. The Sub-clause (b) of

Sub-section (1) of Section 147 provides that policy of insurance must be policy for person or classes of persons specified in the policy and to the extent specified in Sub-section (2) of Section 147. Therefore, the Insurance Company can issue a policy for person or even for classes of persons. But neither in Section 147 nor in Section 149, the insurers have been permitted to exclude the person or classes of persons from coverage of insurance policy. Therefore, the Insurance Company cannot exclude person or classes of persons from coverage of the insurance by incorporating a condition in the policy. At this place, it will be worthwhile to note that Proviso (ii) of Sub-section (1) of Section 147 provides for the subject of contractual liability and it also nowhere provides that by contract insurer can exclude a person from insurance coverage though has not been excluded by the Act of 1988. That means additional liability may be undertaken by the insurer, but the insurer cannot reduce its liability or exclude a person from the coverage of the risk by private contract in violation to the requirement of the statutory coverage of the risk in a policy. Therefore, use of word "effective driving licence" in the insurance policy is not the valid defence even against the insured under the Act of 1988.

18. On facts also there is no material available on record that the insured had knowledge that the licence of the driver of the vehicle expired and the driver of the vehicle did not renew the licence. There is no specific defence of the insurance company that the owner of the vehicle engaged the driver knowing it well that his driving licence has already expired. The Insurance Company also failed to prove that insured was responsible for non-renew of the licence of the driver in time. Therefore, the Tribunal was wrong in holding that the owner of the vehicle willfully breach the condition of the policy.

19. In view of the above discussion, the appeal deserves to be allowed, hence allowed. The award dated 24.10.2002 is modified and it is held that the Insurance Company shall be liable to pay the claim amount.