(2012) 03 DEL CK 0236

In the Delhi High Court

Case No : MAC. APP. 415 of 2010

Mala Jairath APPELLANT

Vs

Oriental Insurance Company Ltd. and Others RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:
Motor Vehicles Act, 1939 — Section 10

Citation : (2013) ACJ 2085

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

Bench : Single Bench

Advocate : S.P. Singh Chaudhari, for the Appellant; R.N. Sharma, Advocate for R-1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The sole question for determination in the Appeal is whether the Respondent i.e. the Oriental Insurance Company has been able to prove the willful breach of the terms of the policy so as to entitle it to the recovery rights as granted by the Claims Tribunal by the impugned order. A compensation of Rs.25,000/- was awarded to the LRs of the deceased Issac Joseph who died during the pendency of the Claim Petition. It is alleged that the said Issac Joseph sustained injuries in an accident which occurred on 10.11.1997. The offending car bearing No. DL-6C-2735 was driven by its owner, the Appellant herein. While dealing with the issue of liability, the Claims Tribunal held as under:-

The insurance company have brought on record of Transport Authority through its record clerk as R2W1 wherein he deposed before this Court that the license of the driver of the offending vehicle was issued only on 23.09.1999. The Insurance company also produced its own officer R2W1 in order to prove the terms and conditions of the policy and breach thereof. The date of accident is 10.11.1997. Therefore, the insurance company have duly proved the fact that the respondent No. 1 was driving the vehicle without driving license at the time of accident. In view of the aforesaid testimonies of R2W1 and R3W1, the insurance company is entitled to recovery rights but only after disbursement of the award amount to the petitioners in terms of judgment of Hon''ble Supreme Court of India in National Insurance Co. Ltd. Vs. Swaran Singh and Others,

2. It is urged by the counsel for the Appellant that it was established on record that a driving license Ex.R3W1/D was issued to the Appellant on 05.08.1985, which was renewed on 23.09.1999. The Respondent Insurance Company did not produce any evidence that the Appellant did not possess a valid driving licence on the date of the accident. I have gone through the testimony of R3W1 Anil Nagpal who proved the verification report Ex.PW2/E. He testified that this licence was issued on 05.08.1985 and renewed on 23.09.1999. He deposed that the report did not reveal the status of the D/L on the date of accident i.e. 10.11.1997.

3. The Insurance Company produced Birender Singh Rawat R2W1 who deposed that the license no.03091999157739 was issued on 23.09.1999. He further deposed that the expiry date of the said license was 22.09.2009 for LMN (NT).

4. The first Respondent/Insurance Company did not produce any evidence that the Appellant did not possess any valid license on the date of the accident. The date of the expiry of the initial license issued on 05.08.1985 was also not given. As per Section 10 of Motor Vehicles Act 1939, a driving license issued or renewed after the commencement of Motor Vehicles Amendment Act 1978, was to be valid for a period of 5 years. It was incumbent on Respondent No. 1 to establish willful and conscious breach of the terms of policy and in the absence of any specific evidence that the licence was not valid on the date of the accident i.e.10.11.1997, it is difficult to say that the Insurance Company has proved willful breach of the terms of the policy.

5. Thus, the Appeal must succeed. The same is accordingly allowed. No costs.

