

(2016) 02 DEL CK 0003

In the Delhi High Court

Case No : Mac. App. 191/2013, CM Nos. 3564-65/2013, Mac. App. 193/2013,
CM Nos. 3599 and 3600/2013

Manjeet Singh

APPELLANT

Vs

Inderjeet Kaur and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Section 151
Motor Vehicles Act, 1988 — Section 140, Section 166

Citation : (2016) 1 ACC 769 : (2016) 2 TAC 529

Hon'ble Judges : R.K. Gauba, J.

Bench : Single Bench

Advocate : Rahul Sharma, Advocate, for the Appellant; Suman Bagga, Pankaj Gupta and Sidhant Jaiswal, Advocates, for the Respondent

Final Decision : Allowed

Judgement

R.K. Gauba, J.—1. On 20.03.2009, at about 12.45 p.m., a motor vehicular accident occurred in the area of Fruit Market, Main Road, Moti Nagar, Delhi involving two motor vehicles, namely, motorcycle bearing registration no. DL 4SV 7614 (the motorcycle) and truck bearing registration no. RJ 32G 1924 (the truck). The motorcycle was driven at that point of time by Sarabdeep Singh and his cousin Surjeet Singh was riding on the pillion. Both Sarabdeep Singh and Surjeet Singh died. The legal heirs of the said deceased persons brought two accident claim petitions (registered as case Nos. 525/2009 and 673/2009 respectively) under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) impleading the driver and owner of the truck as party respondents, besides ICICI Lombard General Insurance Company Ltd.(the insurer) as the third respondent. The claim petitions were clubbed and inquired into together. In both the claim petitions, the driver and owner (now the appellant), as the first and second respondents respectively, put in contest, inter alia, through joint written statements. The insurance company also contested taking the position that it was not liable since there had been breach of insurance policy conditions for the

reason the truck (the offending vehicle) had caused accident in Delhi even though there was no valid permit taken in such respect.

2. Concededly, the appellant (the owner) did not lead any evidence before the tribunal but refuted the contention of the insurance company to above effect. The contentions of the insurance company in such regard, and the conclusions reached thereupon, were dealt with by the tribunal in the impugned judgment dated 26.11.2011, which governed both the claim cases, as under:-

"30. The insurance company have taken a defence that the owner has plied the vehicle without having any permit to ply the same in Delhi. In support of its claim, it has examined its own official Ms. Pooja Sharma as R3W1 and Sh. Pawan Taneja/investigator as R3W2 respectively.

31. The R3W2/Investigator Sh. Pawan Taneja proved the report collected by him from Secretary Regional Transport Authority, Jaipur Ex.R3W2/8. He stated that the permit was only valid for Rajasthan, Haryana, U.P., Gujarat and Daddar.

32. The R3W1 Ms. Pooja Sharma stated that since the offending vehicle was being plied in Delhi without any permit, the owner of the offending vehicle breached the terms and conditions of the policy.

33. I perused the report of the Secretary Regional Transport Authority, Jaipur Ex.R3W2/8. The said report is admissible in Evidence Under Section 7 of Delhi Motor Vehicles Rules 2008, which came into force on 13/07/09 vide notification No. F19(2125) TPt./Sectt./2007/375 dated 13/7/2009, the contents of the report submitted to the Claim Tribunal by the Registering Authority and by the insurance company under Rule 5 (b) shall be presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.

34. The other respondents have failed to prove the said fact to the contrary. Accordingly. Since the report of the Transport Authority, Ex.R3W2/8 is admissible in evidence in terms of aforesaid Motor Accident Tribunal Rules, 2008, and does not require any further proof, the insurer have duly proved the breach of the terms and conditions of the policy through its own officer R3W1.

35. In view of aforesaid discussion, I order the insurance company is entitled for recovery rights against the owner of the offending vehicle but only after the disbursement of the award amount in terms of the judgment of the Hon'ble High Court in case of National Insurance Company Ltd. vs. Swaran Singh & Ors. reported in , 2004 ACJ 1".

3. Compensation on the two claim petitions were granted in the case of death of Sarabdeep Singh and Surjeet Singh in the sum of Rs. 6,82,132/- each carrying interest liability @ Rs. 7.5 % per annum from the date of filing of the petition till realization.

4. The appeals at hand were presented on 27.2.2013 after a delay of 353 days and, thus, with applications (CM Nos. 3564/2013 and 3599/2013) for

condonation, inter alia, contending that though copy of temporary permit had been handed over to the counsel then engaged by the appellant, there had been a neglect on his part in proper prosecution of the defence of the appellant in the proceedings arising out of the claim petitions and in giving timely information about the judgment passed by the tribunal adverse to his lawful interests.

5. On the applications (CM No. 3566/2013 and 3601/2013) under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 of the appellant, by identical orders passed on 03.02.2014, the appellant was given opportunity to adduce additional evidence to prove his contention that the offending vehicle was covered by a valid permit (temporary) for journey to Delhi on the fateful day when the accident occurred. Pursuant to the said liberty granted, the appellant examined Suresh Meena (AW-1) an official of the District Transport Authority, Kotputli, Jaipur, Rajasthan in each of these appeals. The witness was cross-examined by the counsel for the insurance company which, in turn, has not offered to come with any evidence in rebuttal.

6. Both these appeals have been heard against the above backdrop.

7. The contention of the insurance company is that AW-1, who was examined by the appellant in these cases at the stage of appeals, did not produce the relevant original record, and, thus, the permit cannot be held to be duly proved. It is also the contention of the insurance company that, in these circumstances, the evidence led by it during inquiry before the tribunal on the basis of its own in-house verification cannot be ignored. It is further the submission of the insurance company, through counsel, that there is no reason why the appellant could not have adduced his evidence during the inquiry and at any rate, as a result of delay on his part in bringing on record the aforementioned document, the insurance company has suffered unduly inasmuch its interest liability came to be enhanced.

8. On perusal of the records of the tribunal, a very disturbing fact came to notice. Whilst it is true that the appellant had not brought on record the temporary permit during inquiry before the tribunal, on 14.11.2011, at the fag end of the said proceedings, two identical applications were moved invoking Section 151 CPC seeking to place on record copy of the temporary permit, which was sought to be proved during these appeals through AW-1, as noted above. The applications were presented by Mr. Jitender Kumar Garg, Advocate who had been engaged by the appellant, each application supported by his own affidavit. The tribunal directed the same to be put up with the file on date fixed i.e. 16.11.2011. It appears from the proceedings that final arguments had been earlier heard on 9.11.2011 and the cases were listed before the tribunal on 16.11.2011 for orders. On 16.11.2011 the counsel engaged by the appellant sought permission to withdraw his vakalatnama in each case. The orders passed by the tribunal on the said date in both cases are similarly worded and the one in the first claim case may be extracted as under:-

"Suit No. 525/09 & 673/09 16/11/2011

Present: Proxy Counsel for the petitioner. Counsel for the Respondents No. 1 and 2 U.B.S. Yadav.

The matter was fixed for orders.

Ld. Counsel for the Respondents No. 1 and 2 wants to withdraw his Vakalatnama by moving an application. The enquiry in this case has already been over. No harm would be caused to the parties as the enquiry has already been over. The application is allowed. Ld. Counsel for the Respondents No. 1 and 2 is permitted to withdraw his Vakalatnama.

Put up for orders at 04.00 P.M.

Suit no. 525/09 & 673/09

Again

16/11/11

Present: None. Orders not ready as no time is left today Put up for orders on 26.11.2011.

(Sanjay Kumar Aggarwal) Judge, MACT (West) Delhi. 16/11/2011"

9. The learned counsel on both sides confirm that the tribunal's record does not contain any formal application moved in writing by the counsel for the appellant on 16.11.2011. The proceedings recorded by the tribunal do not indicate as to what were the reasons that had prompted the counsel to withdraw his vakalatnama. It is inconceivable that having moved applications on behalf of the appellant just two days ago i.e. 14.11.2011 and having supported the same by his own affidavits, that there would be any cause to have arisen for the counsel to be prompted or instructed to withdraw himself from the proceedings. Permitting an advocate to withdraw his vakalatnama in the manner allowed to be done in the proceedings recorded on 16.11.2011 is highly objectionable. Before he could be allowed to withdraw his vakalatnama, the counsel was duty bound to show to the forum that either he had been so instructed by the client or he (the Advocate) himself had notified the client suitably by way of a proper notice in writing indicating his reasons and intention to withdraw himself from the proceedings.

10. The hurried manner in which the advocate was allowed to withdraw his vakalatnama on 16.11.2011 has given rise to a very awkward position. For all practical purposes, the appellant as indeed the first respondent (driver) before the tribunal were unrepresented w.e.f. 16.11.2011. The application that had been moved on 14.11.2011 bringing it to the notice of the tribunal that the vehicle was brought to Delhi under a valid temporary permit remained unaddressed. There is no reference to the said application in the impugned judgment. Thus, the opportunity to prove the said contention, though submitted

highly belatedly, was denied.

11. In the facts and circumstances wherein the appellant has shown it to the satisfaction of this Court that there was indeed deficiency in services provided by the advocate engaged by him in the claim proceedings before the tribunal, the delay is condoned, though with observation that for this delay and the consequences flowing therefrom, he also must share the blame.

12. The evidence of AW-1 clearly shows that the corresponding record of the Transport Authority in Kotputli, Jaipur, Rajasthan relating to the temporary permit has been weeded out. Nonetheless AW-1 affirmed on oath that the permit, copy of which has been submitted with the aforesaid applications dated 14.11.2011 before the tribunal was actually issued by the Transport Authority in Kotputli, Jaipur, Rajasthan for the period 18.3.2009 to 31.3.2009 in respect of the offending vehicle, thereby authorising its journey from Kotputli, Jaipur, Rajasthan to Delhi via Haryana. The witness was duly cross-examined by the counsel for the insurance company. On being asked, she was unable to explain as to what was meant by the word "area" in respect of which the temporary permit for the vehicle had been issued on 18.3.2009 as was the line of her enquiry during cross-examination. She, however, conceded that since the temporary permit shown through the said witness indicates it to be meant for the State of Delhi, there could be no restriction as to the area in Delhi to which the vehicle could be taken. The corresponding record of the transport authority having been weeded out, the mode of proof cannot be questioned inasmuch as the witness (official) proved the authenticity of the temporary permit relied upon by the appellant.

13. In above facts and circumstances, the reasons on which the tribunal concluded breach of policy conditions are no longer valid. Thus, the insurance company is liable to indemnify the insurer by satisfying the award. The direction in the impugned judgment granting recovery rights to the insurance company against the appellant, thus, will have to be set aside and vacated. Ordered accordingly.

14. There is, however, substance in the grievance of the insurance company that because of neglect on the part of appellant in proper prosecution of his defences, the liability of the insurance company on account of interest stood enhanced. In order to balance the equities, therefore, it is directed that the statutory deposits made by the appellant, in these appeals shall not be refunded and the said amounts instead shall be paid as costs to the insurance company to soften up the loss to some extent.

15. The appeals are allowed in above terms.