

(2007) 05 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal No. 396 of 2009 (Arising out of SLP (C) No. 19513 of 2006)

National Insurance Company Ltd.

APPELLANT

Vs

Meena Aggarwal

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Citation : (2007) 05 SC CK 0046

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : S.L. Gupta, Goodwill Indeevar and A.V. Smarma, for the Appellant;

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi, (in short the 'National Commission').

3. Background facts in a nutshell are as follows:

4. Respondent was the owner of a vehicle - a Maruti van, which was the subject matter of insurance with the present Appellant for a period from 27.1.2003 (sic) 26.1.2004. The vehicle in question met with an accident on 12.6.2003 and was damaged. The estimate of the cost of repair was prepared by Automobiles Satya (sic) Bilaspur. According to him the estimated expenditure on total repair of the (sic) was Rs. 2,00,000. Intimation of the same was given by the complainant to the (sic) Appellant and claim was made. The same was rejected on the ground that the (sic) of the vehicle did not possess a valid driving licence and the vehicle which (sic) private vehicle was insured for personal use, but was being used as a taxi for (sic) marriage parties. A marriage party was being transported in the vehicle (sic) charging rent of Rs. 2,100 when the accident occurred. The driver did not po(sic) valid licence and, therefore, the vehicle was being plied against the terms (sic) insurance policy. The District Consumer Disputes Redressal Forum S(sic) Ambikapur Chhattisgarh, rejected the claim petition. An appeal was

preferred (sic) the State Consumer Dispute. Redressal Commission, Rajpur (in short the 'State Commission'). By order dated 17.10.2005, the appeal was allowed. It was held that it would be proper to declare the claim of complainant as 'Non-standard' consequent to the violation and breach. Therefore, the present Appellant was directed to pay Rs. (sic)0,000, i.e. 75% of Rs. 1,20,000 i.e. the amount assessed by the surveyor of the insurance company along with 9% interest. The only reason given by the State Commission was that even if the vehicle was being used as a taxi, there was no fundamental breach of the terms of the policy. A revision petition was filed before the National Commission which came to be dismissed by the impugned order. The National Commission held that even though the vehicle was being used as a commercial vehicle and the driver did not have a valid driving licence, there was. no fundamental breach of the terms of the policy. According to the Appellant the insured vehicle was being used as a commercial vehicle, and the driver of the vehicle is required to hold an appropriate licence. If the driver who was driving the vehicle at a relevant point of time did not possess any licence to drive a commercial vehicle, there is a breach of the conditions of the policy and such plea was available to be raised as a defence.

4. This coast in National Insurance Co. Ltd. Vs. Swaran Singh and Others, clearly said that the liability of the insurance company vis-a-vis the owner would upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in (sic)aran Singh's case-stating: "39. 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 ore 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-(sic)cab 'motorcycle', 'omnibus', 'private' service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor', trailer' and 'transport vehicle'. In claims for compensation for (sic)ents, various kinds of breaches with regard to the conditions of driving (sic)cences 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."

5. The matter came up for consideration again before this Court in National Insurance Corporation Ltd. Vs. Mrs. Kanti Devi and Others, , wherein this Court upon consideration of the observations made in Swaran Singh's case opined:

12. The decision in Swaraj Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case.

6. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.

7. The aforesaid aspect was thereafter highlighted in National Insurance Co. Ltd. Vs. Kusum Rai and Others, . The said case related to the liability in the case of a third party. In the instant case, no such claim is involved and the claim is related to the damage of a vehicle.

8. The Respondent has not appeared in spite of service of notice.

9. We find that the State Commission and the National Commission have not practically indicated any reason for coming to the conclusion that there was no fundamental breach of die terms of the policy. Both the State Commission and the National Commission observed that the vehicle was being driven by a person who did not have a valid driving licence. In addition to that the vehicle which was insured for personal use was used for commercial purposes.

10. Looked at from any angle the impugned orders of the State Commission and the National Commission are unsustainable, deserve to be set aside, which we direct No costs.