
(2014) 08 GUJ CK 0017
In the Gujarat High Court
Case No : First Appeal No. 476 of 2005

National Insurance Co. Ltd.	Vs	APPELLANT
Bhikhabhai Jeshabhai		RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 142
Evidence Act, 1872 — Section 114
Motor Vehicles Act, 1988 — Section 10, 14, 149, 149(2), 149(2)(a)(ii)

Citation : (2014) 08 GUJ CK 0017

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Maulik J. Shelat, Advocate for the Appellant; Harshit S. Tolia and Jotia, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under section 173 of the Motor Vehicles Act, 1988 is at the instance of the Insurance Company and is directed against the award dated 5th August 2004 passed by the Motor Accident Claims Tribunal [Aux], Rajkot, in M.A.C.P. No. 1348 of 1996 whereby the Tribunal awarded a sum of Rs. 68,700/- in favour of the claimants with interest at the rate of 9% per annum from the date of filing the application till realization. The Insurance Company was held jointly and severally liable to pay the amount along with the owner and the driver of the offending vehicle.

2. Being dissatisfied, the Insurance Company has come up with the present appeal.

3. Mr. Shelat, the learned advocate appearing on behalf of the appellant had raised a pure question of law as to the liability of the Insurance Company to pay the amount.

4. In this case, there is no dispute that the offending vehicle was insured by the

appellant-Insurance Company. There is also no dispute that on the date of the accident, viz. 7th October 1996, the driver of the offending vehicle, who also happens to be the owner, had no existing valid licence for driving the said vehicle. It appears that the licence of the owner-cum-driver of the offending vehicle expired on 9th February 1995 whereas the accident occurred on 7th October 1996 and the driver had renewed his licence from 15th November 1996, that is to say, 1 year and 8 days after the date of the accident, and thus, 1 year and 8 days prior to the accident, the driving licence expired and he did not care to renew the licence.

5. Therefore, the only question that arises for determination in this appeal is whether the Insurance Company is liable to pay the amount on behalf of the errant owner-cum-driver for breach of conditions of the Insurance.

6. Mr. Shelat, the learned advocate appearing on behalf of the appellant has strongly relied upon the decision of the Supreme Court in the cases of National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, and of Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, in support of his contention that in similar circumstances as prevailing in this case, it was held that the Insurance Company had no liability.

7. Mr. Tolia, the learned advocate appearing on behalf of the claimant-respondent, has, on the other hand, relied upon the three-judges-bench decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, and also on the decision of the Supreme Court in the case of Kusum Lata and Others Vs. Satbir and Others, in support of his contention that in this type of cases, the Insurance Company should first pay the amount to the claimants and then recover the amount from the owner of the vehicle.

8. After hearing the learned counsel for the parties and after going through the materials on record, I find that in the case of National Insurance Co. Ltd. v. SWARAN SINGH [supra], a three-judge-bench of the Supreme Court had the occasion to consider the question of liability of the Insurance Company in a third-party claim where there has been breach of conditions of policy at the instance of the owner/insured. The said bench arrived at the following conclusion at paragraph 108 of the judgment, which is quoted below:

"108. The summary of our findings to the various issues as raised in these petitions are as follows:

(i). Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii). Insurer is entitled to raise a defence in a claim petition filed under Section

163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii). The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv). The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v). The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi). Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii). The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii). If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix). The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily

the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x). Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi). The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

(Emphasis supplied)

9. It further appears that the aforesaid three-judges-bench decision of the Supreme Court in the case of National Insurance Co. Ltd. v. SWARAN SINGH [supra] was taken note of by subsequent two-Judges-bench of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, and in the case of Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, in a situation like the present one, where the accident had occurred at a point of time when the driving licence of the driver of the vehicle had expired. The Supreme Court came to the conclusion that the Insurance Company was not liable to make payment of the award.

10. In the case of National Insurance Company Ltd. vs. Vidhyadhar Mahariwala (supra), the Supreme Court, in a situation like the present case, observed as follows:

"4. In the instant case the date of accident was 11-6-2004. The driver's licence was initially valid for the period from 15-12-1997 to 14-12-2000 and thereafter

from 29-12-2000 to 14-12-2003. Thereafter, it was again renewed from 16-5-2005 to 15-5-2008. The appellant filed its objections before MACT taking the stand that since the driving licence was not valid on the date of accident it had no liability. MACT turned down the plea. According to it though on the date of accident the driving licence was not valid, since the driver's licence was renewed on 16-5-2005 for a further period of three years it cannot be said that during the intervening period the driver was incompetent or disqualified to drive the truck. With reference to Section 114 of the Evidence Act, 1872 (in short "the Evidence Act") it was held that at the time of accident the driver was competent to drive the vehicle.

5. In appeal, by the impugned judgment the High Court referred to three judgments of this Court in *National Insurance Co. Ltd. v. Swaran Singh*, *National Insurance Co. Ltd. v. Kusum Rai*, and *Oriental Insurance Co. Ltd. v. Nanjappan* and came to hold that the Insurance Company, the insurer was liable to indemnify the award. It was held that merely if there was a gap in the renewal of driving licence that cannot be a ground for exoneration.

6. In support of the appeal, placing reliance on the decision of this Court in *Ishwar Chandra v. Oriental Insurance Co. Ltd.*, it was contended that the High Court's view is unsustainable.

7. Learned counsel for Respondent 2, the owner of the vehicle on the other hand supported the judgment of MACT.

8. In *Swaran Singh* case whereupon Respondent 2 relied, it was held as follows: (SCC p.324, paras 45-46)

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

9. In *Kusum Rai* case it was held as follows: (SCC pp. 255-56, para 14)

"14. This Court in *Swaran Singh* clearly laid down that the liability of the

Insurance Company vis-à-vis the owner would depend 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-à-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para 89)

"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." "

10. Nanjappan case was referred to in Kusum Rai case.

11. In Ishwar Chandra case the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from Respondent 2."

11. In view of the aforesaid decision of the Supreme Court interpreting the three-judges-bench decision of the Supreme in the case of National Insurance Co. Ltd.

v. SWARAN SINGH [supra], as well as the other two decisions referred to above, I am of the view that the Insurance Company is not liable to make payment of the awarded amount, more so, when the driver in this case is the owner himself who knowingly was driving the vehicle in violation of the terms of the insurance. Thus, he cannot take advantage of his own wrong.

12. In the case of KUSUM LATA v. SATBIR [supra], the Supreme Court was dealing with a case under section 166 of the MV Act where the Tribunal framed three issues. The first issue was whether the offending vehicle being a tempo, was at all involved or not, and the said issue was decided against the claimant, and as such, no compensation was awarded by the Tribunal. On an appeal filed against the said award by the claimant, the High Court confirmed the award passed by the Tribunal. The reason why both the Tribunal and the High Court reached their respective findings that the said was not involved in the accident was primarily because of the fact that in the FIR lodged by the brother of the victim, neither the number of the vehicle nor the name of the driver was mentioned. The Supreme Court set aside the findings of the Tribunal and the High Court for non-consideration of various materials on record. So far as the findings reached by the Tribunal for assessment of compensation, the Supreme Court held that instead of application of multiplier of 16, that was a fit case where multiplier of 17 should have been applied. Thereafter, in exercise of power under Article 142 of the Constitution, considering the number of claimants of which three were minor children, the Supreme Court was of the opinion that for doing complete justice in the case, compensation of Rs. 6 lakh should be awarded. After arriving at such conclusion, in paragraph 13 of the judgment, the Supreme Court made the following observations:

"13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

12.1. By relying upon the aforesaid observations in paragraph 13 of the judgment, Mr. Tolia submitted that I should follow the said decision.

12.2. It does not appear from the judgment as to what was the nature of the dispute involved about the licence, and, as such, it is very difficult to accept the contention of Mr. Tolia that in paragraph 13 of the above judgment, any broad proposition of law has been laid down as regards a position where at the time of accident the driving licence of the driver has expired. It further appears that the attention of the Bench was not drawn to the earlier decisions of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, and of Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, .

12.3. I, therefore, propose to follow the principle laid down by the Supreme

Court in the case of National Insurance Co. Ltd. v. Vidhyadhar Mahariwala And Others [supra] where the earlier decision of the Supreme Court in the case of National Insurance Co. Ltd. v. Swaran Singh & Ors. [supra], and several other decisions have been taken note of, and those decisions have been construed by the Supreme Court.

13. Mr. Tolia also relied upon an unreported decision dated 30th April 2012 of a learned Single Judge of this Court in First Appeal No. 3311 of 2000 [New India Assurance Co. Ltd. v. Radhaben Talshibhai Thakore & Ors], where the learned Single Judge refused to entertain the appeal preferred by the Insurance Company on the sole ground that the amount involved in the appeal was less than Rs. 1 lakh by holding that the appeal should be dismissed on the ground of meagre amount involved in the appeal. According to Mr. Tolia, in the instant case also, as the amount involved being even less than Rs. 1 lakh, I should dismiss the appeal.

13.1. I am afraid, I am not impressed by the aforesaid submission. The restriction imposed under section 173(4) of the MV Act for maintaining the appeal being limited to Rs. 10,000/-, the view taken in the aforesaid unreported decision of the learned Single Judge cannot be said to be a correct approach. With great respect to the learned Single Judge, I am unable to follow the said decision as a precedent.

14. In view of the aforesaid situation, I find that this appeal deserves to be allowed, and is allowed accordingly. It is held that the Insurance Company is not liable to satisfy the impugned award. The award is modified only to the extent that the amount awarded will not be payable by the Insurance Company but by the owner of the vehicle. It appears that the Insurance Company has deposited the entire awarded amount before the Tribunal which was ordered to be invested in a Fixed Deposit. Although I have arrived at the conclusion that the Insurance company has no liability to pay the amount, yet, I, however, propose to follow the principles laid down by the Supreme Court in case of Ishwar Chandra And Ors. v. Oriental Insurance Co. Ltd. & Ors. [supra] and Oriental Insurance Company Ltd. vs. Nanjappan reported in AIR 2006 SC 1630 by passing the following direction:

14.1. The amount deposited by the Insurer should be released in favour of the claimant and would be recovered from the owner of the vehicle. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue has been decided against the owner and in favour of the insurer. Before release of the amount, the insured, the owner of the vehicle, shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle or any other vehicle now owned by the insured shall be attached, as a part of the security. If necessity arises the Executing Court shall

take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

14.2. The appeal is disposed of in the aforesaid terms, with costs, which I assess as Rs. 10,000/- payable by the owner of the vehicle to the insurer.