

(2002) 04 P&H CK 0135
In the Punjab And Haryana At Chandigarh

National Insurance Co. Ltd.	Vs	APPELLANT
Hari Singh and Others		RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149

Citation : (2004) 2 ACC 317 : (2002) 3 RCR(Civil) 55

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Judgement

M.M. Kumar, J.—This revision filed under Article 227 of the Constitution is directed against the order dated 18.9.2000 passed by the Motor Accident Claims Tribunal (for brevity as "M.A.C.T."), Narnaul, directing the petitioner Insurance Company to pay an amount of Rs. 65,000/- along with interest at the rate of 12 per cent per annum from the date of filing of the petition, i.e., 14.12.1989 till its realisation.

2. Brief facts necessary for the decision of the controversy raised in the present revision petition are that on 4.10.1989, an accident took place involving the insured vehicle No. HYN 7395. A 19 years old cleaner boy was killed, so the parents of the deceased Surety Kumar filed a claim petition on 14.12.1989 claiming a sum of Rs. 3,00,000/- as compensation. The matter was referred to the Lok Adalat where a compromise was arrived and the parties agreed for payment of Rs. 65,000/-. The Deputy Manager of petitioner Insurance Company made the following statement before the Lok Adalat:

We have heard the above statement 122of the Counsel for the claimants. An award of Rs. 65,000/- be passed in favour of the claimants in full and final settlement of the claim. We will make the payment within two months, failing which the claimants will be entitled to interest at the rate of 12 per cent per annum from the date of petition till final satisfaction of the claim, subject to verification of driving licence/R.C. and further subject to undertaking by the

parents that they have not claimed/received any amount under Workmen's Compensation Act.

RO & AC Sd/- Dated : 29.1.1991 Motor Accidents Claims Tribunal, Narnaul

Sd/- B.D. Karia, Advocate for Insurance Company. Sd/- K.K. Dutta, Dy. Manager, National Insurance Co. Ltd.

3. In accordance with the above referred statement, an award dated 1.2.1999 was passed by the M.A.C.T.

4. Despite the award having been passed, by the M.A.C.T. on 1.2.1999, the petitioner Insurance Company failed to make payment of the awarded amount on the excuse that the driving licence and registration certificate have not been produced either by claimants or by the owner/driver of the offending vehicle. Irked by the attitude of the petitioner Insurance Company, the claimants-respondents filed an execution petition for the recovery of the amount and direction was sought for payment of the awarded amount of Rs. 65,000/- along with interest at the rate of 12 per cent per annum. The Tribunal after considering the objection raised by the petitioner Insurance Company that the driving licence has not been produced by the driver of the offending vehicle, recorded the following order:

The case cannot be reopened because it stands already decided. In support of this view, the Counsel for the respondent Insurance Company placed reliance of New India Assurance Co. Ltd. v. Jamuna Devi 1997 ACJ 446 (Patna), where at page 449, it has been observed that there is no express provision in the Motor Vehicles Act or the Rules framed thereunder giving the Tribunal jurisdiction to exercise the power of review and to modify the judgment and award after it is finally pronounced, the only remedy available is to challenge the judgment and award in the Appellate Court, so, it cannot be reopened as it was finally decided by my learned predecessor. Now the question remains to be decided whether the Insurance Company can be directed to make the payment of compensation. The learned Counsel for the claimant placed reliance upon Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397 (SC), where it was observed that the onus is on the Insurance Company to prove that the driver had no driving licence to escape the liability; mere non-production of the licence by the driver does not exonerate the Insurance Company and it was held liable to indemnify the award. In that case, the driver failed to produce the licence, even then, the Insurance Company was ordered to pay the amount of the awards by the Hon"ble Supreme Court. In the present case, although the driver has failed to produce the driving licence, but the Insurance Company has not placed on the record any evidence to show that the driver was not having a valid driving licence. So, the Insurance Company must pay the compensation amount of Rs. 65,000/- along with interest at the rate of 12 per cent per annum, from the date of filing of the petition which was filed on 14.12.1989 till payment.

5. Mr. Inderjit Sharma, learned Counsel for the petitioner Insurance Company

has argued that in the absence of production of a valid driving licence, the Insurance Company cannot be directed to pay the award amount to claimant respondents because it was part of the terms of the award. On that basis, the learned Counsel urged that the order passed by the Tribunal is liable to be set aside.

6. On the other hand, Mr. S.K. Mittal, learned Counsel for claimant respondents has submitted that insofar as the question of production of valid licence or the registration certificate of the vehicle is concerned, it cannot be the responsibility of the claimant-respondents. In any case, the production of valid driving licence and the registration certificate is a matter between the Insurance Company and the driver/owner of the offending vehicle. Therefore, he submitted that on that score the compensation amount awarded to claimant-respondents cannot be withheld.

7. Having heard the learned Counsels for the parties and pursuing the record, I am of the considered opinion that this petition is devoid of merit and, thus, is liable to be dismissed. According to the law laid down by the Apex Court in the case of *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, the obligation of the Insurance Company to pay to third parties cannot be impeded by the non-production of the driving licence or the registration certificate. Referring to the provisions of Section 149 of the Motor Vehicles Act, 1988, Their Lordships of the Apex Court in *Kamla's case (supra)*, have observed as under:

(21) A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means the insurer has to pay the third parties only on account of the fact that a policy of insurance had been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

(22) To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

(23) It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411. Though the said decision related to the corresponding provision of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act.

Learned Judges pointed out that the insistence of the Legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the Insurance Company but to protect the members of the community who become sufferers on account of accidents arising from use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the Courts were not recoverable by the victims (or dependents of the victims) of the accident. This is the *raison d'être* for the Legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of insurance.

(24) The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, .

(25) The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned Counsel for the insured contended that it is enough if he establishes that he made all due inquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant-third parties) from the insured person.

(Emphasis added)

8. If the principles laid down in *New India Assurance Co. Ltd. v. Kamla* (supra), are applied to the facts of the present case, it becomes absolutely clear that the order passed by the Tribunal does not admit any exception and cannot be assailed on any ground. The petitioner Insurance Company has to pay to the third parties only for the reason that a policy of insurance has been issued in respect of the vehicle. Between the Insurance Company and the insured if any dispute arises, that has to be settled separately in independent proceedings. Therefore, his revision petition is liable to be dismissed.

9. For the reasons recorded above, this revision petition fails and the same is accordingly dismissed with costs which are assessed at Rs. 5,000/-. The Tribunal is directed to proceed with the execution and decide the case within a period of two months from the date of receipt of a certified copy of this order. The parties

through their Counsels are directed to appear before the Tribunal on 13.5.2002.
Copy of this order be given dasti.