

(2004) 09 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : CIMA No's. 104 of 2001 and 87 of 2002

National Insurance Co. Ltd.

APPELLANT

Vs

Irfan Sidiq Bhat and Mohd Aslam Khan

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Citation : (2005) 1 JKJ 42

Hon'ble Judges : S.N. Jha, C.J.;Nissar Ahmad Kakru, J

Bench : Division Bench

Advocate : J.A. Kawoosa, for the Appellant; Sami Yaqoob in 104/01 and Manzoor Ali in 87/2002, for the Respondent

Judgement

S.N. Jha, C.J.—These two appeals arising from the decisions of the State Consumers Protection Commission, Srinagar, involving identical

dispute and common question of law were heard together and are disposed of by this common judgment. Before advertng to the dispute involved,

the facts may, briefly, be noticed.

2. In CIMA No. 104/2001, arising from complaint No. 23/2000 titled Irfan Sidiq Bhat v. Senior Divisional Manager, National Insurance Co. Ltd.,

the facts are that the complainant owned a Tata Sumo bearing registration no JK-01D-5147 of 1999 model. He got the vehicle insured with the

National Insurance Co. Ltd.(in short the Insurance Company) and started running it as passenger taxi. On 7th September, 1999 the vehicle met

with an accident at Bijbehara when it was blown up in a mine blast resulting in death of the driver Showkat Ahmad and two passengers on the spot

and total loss of the vehicle. The complainant lodged an FIR and also raised claim for compensation. Elite Surveyors were appointed as surveyor

to assess the quantum of loss. Jehlum Investigating Service Pvt. Ltd. was appointed to investigate the case. The said agency found that the driver was authorized to driver heavy transport vehicle and there was no public service vehicle (PSV) endorsement on the licence. The Insurance Company thus took the stand that as the driver did not hold a valid driving licence at the time of the accident and as such was not competent to drive the vehicle. This constituted a breach of the conditions of insurance on the part of the owner/complainant and hence he was not entitled to indemnity and compensation.

3. Relying on the decision of the Supreme Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , on the ground that the weight of the vehicle was less than six thousand kilograms the Commission allowed the claim of the complainant to the extent of Rs. 3,53,500/-

4. In CIMA No. 87/2002, the facts are that the complainant, Mohd. Aslam Khan, also owner of a Tata Sumo vehicle, got it insured with the National Insurance Company Ltd. The vehicle met with an accident at Digdol on 20th April, 1999. The passengers including the driver, by name, Zahoor Ahmad, died in the accident and the vehicle suffered total loss. The complainant lodged FIR and raised claim for compensation. After the preliminary survey confirmed the loss, the Insurance Company appointed Elite Surveyors to assess the loss. The loss was assessed at Rs. 2. 82 lakhs on market value basis. The parties accordingly settled the claim. However, before payment could be made, it came to notice of the Insurance Company that the public service vehicle (PSV) endorsement on the driving licence of the driver was fake. On this ground the Insurance Company repudiated the claim which led to the complaint by the complainant / respondent before the State Commission which was registered as complaint No. 55/2000.

5. The Commission, following the decision of the Supreme Court in Ashok Gangadhar Maratha v. Oriental Insurance Co Ltd (supra), took the view that the driving licence for light motor vehicles, including Tata Sumo, did not require public service vehicle (PSV) endorsement and, therefore, even if the endorsement to that effect on the driving licence was fake, it cannot be said that the driver did not hold a valid driving licence at the time of the accident so as to constitute violation of the conditions of the contract of

insurance, and disentitle the complainant to compensation on that ground.

6. Mr. J.A. Kawoosa, learned counsel for the appellant Insurance Company, submitted that in terms of rule 4(1)(a) of the Jammu and Kashmir

Motor Vehicle Rules 1991 (for short, 'State Rules'), a person cannot drive a public service vehicle unless he is authorized in that behalf by the

licensing authority of the State. In terms of Section 3 of the Motor Vehicles Act, 1988 a person can drive a motor vehicle at any public place only

if he holds an "effective driving licence" issued to him authorizing him to drive the vehicle. In *Ashok Gangadhar Maratha v. Oriental Insurance Co.*

Ltd. (supra) the term "effective driving licence" was interpreted as referring to both the period and type of vehicle. As the drivers in these two cases

held licences to drive heavy goods vehicle, without any authorization to drive a public service vehicle in terms of rule 4 of the State Rules, there can

be no escape from the conclusion that they were not authorized to drive the vehicles in question. Allowing them to do so constituted a breach of

the condition of contract of insurance on the part of the owners, disentitling them to any compensation for the loss suffered by the vehicles as a

result of the accident. In support of the contention counsel placed reliance on two unreported decisions of Single Judges of this Court in *National*

Insurance Co. v. Mst. Shah Mali and others (CIMA No. 47/1998 and analogous) and *National Insurance Co. v. Sita Ram and others* (CIMA no

244/98 and analogous).

7. On behalf of the claimants-respondents, it was submitted that by virtue of the driving licence held by the concerned drivers about which there is

no dispute, they were competent to drive Tata Sumo without any express authorisation under rule 4(1)(a) of the State Rules. They placed reliance

on the decision in *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd* (supra).

8. We have looked into the driving licences held by Showkat Ahmad and Zahoor Ahmad which are on record. Both the driving licences were for

heavy transport (goods) vehicle (C to E). Peerzada Noor-ud-Din, a clerk of the RTO office, Srinagar, who was examined as witness in both the

cases, explained that abbreviation 'C to E' means light motor vehicles, medium goods vehicles and heavy goods vehicles. As a matter of fact, we

may mention, 'c', 'd' and 'e' are serial nos. of the relevant column of the driving licence in form D against which 'light motor vehicles', 'medium motor

vehicles' and 'heavy motor vehicles' have been mentioned as types of vehicles which the holder of the licence can drive. These serial nos. i.e. 'c', 'd'

and 'e' were tick marked by pen in both the driving licences. Thus, both Showkat Ahmad and Zahoor Ahmad held driving licences with respect to

light motor vehicles, besides heavy transport (goods) vehicles and medium motor vehicles.

9. Section 2(21) of the Motor Vehicles Act defines 'light motor vehicle' to mean:

a transport vehicle or omnibus, the gross vehicle weight of either of which, or a motor car or tractor or road-roller the unladen weight of any of

which, does not exceed 7,500 kilograms"".

Section 2(47) of the Motor Vehicles Act defines 'transport vehicle' to mean:

a public service vehicle, a good carriage, an educational institution bus or a private service vehicles"".

'Public service vehicle' has been defined in Section 2(35) of the Motor Vehicles Act to mean:

any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract

carriage, and stage carriage.

Section 3 of the Motor Vehicles Act around which the dispute revolves reads as under:

3. Necessity of driving licence. - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to

him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or a motor cycle hired for his own

use or rented under any scheme made under Sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do.

Driving licence has been defined in Section 2(10) of the Act to mean:

the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor

vehicle or a motor vehicle of any specified class or description.

10. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat

Ahmad and Zahoor Ahmad were competent in terms of Section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV

endorsement and express authorization in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood

satisfied. The said rule provides:

No person shall drive a public service vehicle unless an authorisation in the form prescribed by the Central Government has been granted or

countersigned by a licensing authority in the State.

Where the licence authorizes the person to drive a 'public service vehicle' within the meaning of Section 2(35) of the Act, there is no question of

further authorization under rule 4(1)(a) of the State Rules. The State Rules have to be understood as complimentary to the Act and not in

derogation of it and 'public service vehicle' in rule 4(1)(a) of the State Rules can not be understood and given a different meaning from Section

2(35) of the Central Act.

11. Undisputedly, both the drivers held driving licence which entitled them to drive light motor vehicles within the meaning of Section 2(21) of the

Motor Vehicles Act. Light motor vehicle includes a transport vehicle; transport vehicle includes a public service vehicle and public service vehicle

includes any motor vehicle used or adapted to be used for carriage of passengers for hire or reward. The question of authorization within the

meaning of rule 4(1)(a) of the State Rules would arise only in cases where the driving licence does not relate to public service vehicle within the

meaning of Section 2(35) of the Act. Where the licence authorizes the person to drive a light motor vehicle and the vehicle conforms to the

description/definition of 'light motor vehicle' and 'public service vehicle', in Section 2 (21) and (35) of the Act, it would not be necessary to obtain

another authorization under rule 4(1)(a) of the State Rules. Peerzada Noor-ud-Din, as a matter of fact, in his statement categorically stated that

light motor vehicles include, among other vehicles, Tata Sumo; that the licence with respect to light motor vehicles did not require any PSV

endorsement; and that by virtue of the driving licence held by them, the driver could drive a taxi - to be precise, a Tata Sumo. The fact that Tata

Sumo by virtue of its weight being less than 7500 Kgs qualifies to be a 'light motor vehicle', is not in dispute.

12. It may not be out of place to state here that in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , a three-judge Bench of the

Supreme Court has pointed out the distinction between ""effective licence"" - the term used in Section 3 of the Act, and ""dully licensed"" used in

Section 149(2), and held that absence of an effective licence u/s 3 may make the person liable to prosecution, but in order to avoid their liability (in

case of third party claim) the Insurance Company must not only establish the available defence(s) but also prove a conscious 'breach' on the part of

the owner of the vehicle.

In the case of Mohd. Aslam Khan (CIMA No. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer

did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV

endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all

material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it

would not materially affect the claim. By virtue of ""C to E"" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no

separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service

vehicle u/s 2(35). A holder of driving licence with respect to 'light motor vehicle' is thus competent to drive any motor vehicle used or adapted to

be used for carriage of passengers i.e. a public service vehicle.

13. As a matter of fact, so far as the case of Irfan Sidiq Bhat in CIMA No. 104/2001 is concerned, the question as to validity of the driving licence

of Showkat Ahmad is completely beside the point inasmuch the vehicle in question suffered loss in a mine blast. It cannot, therefore, be said that

the driver contributed to the accident. In the case of National Insurance Co. v. Swaran Singh(Supra), the Supreme Court has observed that where

the driver possessing licence for one type of vehicle is found to be driving another type of vehicle, a question would arise as to whether this was the

main or contributory cause of accident. It was held that:

....If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and

similar other causes having no nexus with 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...

The Court, further, referred to minor breaches of inconsequential deviation in the matter of use of vehicle and observed that such minor

inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance.

Another aspect of the case is that the alleged breach of the condition of insurance must be within the knowledge of the insured i.e. the owner to

disentitle him to compensation. In *National Insurance Co. v. Swaran Singh* (supra), dealing with this aspect, the apex court observed as under:

...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.

The following observations in the said decision may also be usefully quoted:

...The insurance companies, 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 whereof would be on them. 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. 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 Tribunal 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 u/s 149(2) of the Act. 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.

14. We are conscious of the fact, as pointed out by Mr. Kawoosa, that the decision in *National Insurance Co v. Swaran Singh* was rendered in

the context of third party claim. In our opinion, the legal position would be no different in the case of own vehicle damage claim. While permitting a

person to drive the vehicle, the owner is not supposed to make a fullfledged enquiry about the validity of the driving licence. If the driving licence ex

facie shows that the person is competent to drive a particular type of vehicle, the owner is not supposed to make enquiry from the concerned

licensing authority about its genuineness. The driving licence of Zahoor Ahmad, for example ex facie contained PSV endorsement which was fake.

We do not think it would be a reasonable proposition to expect of the owner to have the genuiness/ validity of the licence or any endorsement

thereon verified from the licensing authority. In any view, onus is on the insurance company to prove that with positive knowledge of the

incompetence of the person or invalidity of his driving licence, the owner allowed him to drive the vehicle and thereby committed breach of the

condition of insurance policy. In other words, it is for the insurer to prove that the insured was guilty of negligence. The insured had only to exercise

reasonable care in fulfilling the conditions of the policy of insurance regarding use of vehicle by a duly licensed driver. Simply on the ground that the

driving licence did not contain PSV endorsement or that such endorsement was fake or that licence itself was fake, in itself would not be a

sufficient ground to repudiate the claim of the owner. Negating the claim of the owner on such technical grounds would not be in the interest of

justice.

15. In the cases of *National Insurance Co. v. Mst. Shah Mali* (supra) and *National Insurance Co. v. Sita Ram* (supra) from the facts stated in the

judgments it is not clear whether vehicles conformed to the description of 'public service vehicle' in Section 2(35) of the Act, and the cases may

have been correctly decided on facts. However, as a general proposition, the question as to whether by virtue of licence to drive a 'light motor

vehicle', among other things, the driver was competent to drive a vehicle ""used

or adapted to be used for the carriage of passengers for hire or reward"" i.e. a taxi cab falling within the ambit of 'light motor vehicle' u/s 2(21) and public service vehicle u/s 2(35) of the Motor Vehicle Act without an express authorization under rule 4(1)(a) of the State Rules, was not considered. The finding to the contrary does not appear to be correct in law.

16. In view of our conclusion that both Showkat Ahmad and Zahoor Ahmad held effective licences to drive Tata Sumo vehicles, the decision of the Commission, awarding compensation to the claimants respondents, cannot be said to be illegal.

17. A separate argument was made regarding the quantum of compensation in CIMA No. 104/2001. It was submitted that the surveyor had assessed the loss in three categories - Rs. 3,20,000/- on repair basis, Rs. 3,53,500/- on total loss (insured value) basis and Rs. 2,30,500/- on total loss (market value) basis. According to the counsel, the compensation, if any, should have been allowed on the basis of market value i.e. Rs. 2,53,500/-

18. The submission to this effect appears to have been made before the Commission also which took the view that as the vehicle suffered total loss within six months of the purchase for Rs. 4 lacs, in terms of Endorsement 74 it was not necessary to work out the market value on the basis of depreciation and, accordingly, awarded compensation on the basis of insured value of the vehicle. We find no reason to take a different view. The submission in this regard is, thus, rejected.

19. Submission was also made on the point of interest. It was submitted that the Commission has awarded 12% interest in the event of non payment of the amount of compensation within the specified period. According to the counsel, the higher interest in the event of non payment of compensation within the specified period is penal in nature and, in any view, not in accordance with the decision of the Supreme Court in Smt.

Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . We find substance in the submission. The trend of

judgments following the above said case is to award interest @ 9%. We, accordingly, direct that the amount of compensation as awarded to the

claimant-respondents shall carry interest @ 9%. The decision of the Commission

is modified to this extent.

20. Subject to the modification regarding rate of interest the appeals are dismissed.