
(2001) 09 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 700 to 704 of 1996 and 23 and 27 of 1997

National Insurance Co. Ltd.

APPELLANT

Vs

Keshrimal and Others

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 170

Citation : (2003) 1 RLW 601 : (2002) 1 WLN 632

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : B.S. Bhati, for the Appellant; M. Jain, Anil Sharma, Lalit Kawadia and Gajendra Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties.

2. As per the facts of these cases the passengers were travelling in Bus No. RRY 3435 on 7th Feb., 1993 and this bus was driven by non-applicant No. 3, Om Prakash rashly and negligently and the bus turned resulting into the death of passengers Shripal and Kalia whereas Nathi, Devli, Paru, Kanhaiyalal, Kesari Mal and Magna were injured. The bus was owned by non-applicant No. 1 Smt. Pushpa Devi. This bus was insured with non-applicant No. 2, Insurance Company who is appellant in all these appeals.

3. In claim case No. 102, deceased was Shripal and claim was for Rs. 9,19,000/-. The claim case No. 147/93 was filed by wife of deceased Shripal and two children and mother of the deceased Shripal. The claim No. 102/93 was also filed by the claimant's wife and her two minor daughters for the death of the same person, Shripal. In claim case No. 102/93 claim of Rs. 3,92,500/- was claimed by the claimants and the Tribunal awarded Rs. 1,00,000/- while deciding both the claim cases No. 102/93 147/93.

4. The claim case No. 106/93 was filed by the wife of deceased Kalia whereas the claim case No. 148/93 was filed by the mother and father of Kalia alongwith the same, wife of Kalia. In claim case No. 106/93 claimants claimed Rs. 9,91,000/- and in claim case No. 148/93 Rs. 3,92,500/- were claimed. The tribunal awarded Rs. 1,50,000/- in both the cases.

5. In claim case No. 101/93, Nathi (injured) claimed Rs. 2,78,000/-. In claim case No. 103 Devli (injured) claimed Rs. 2,63,000/- in claim case No. 101/93, the tribunal awarded total Rs. 25,000/- whereas in claim case No. 103/83 the tribunal awarded only Rs. 1000/-. In claim case No. 104/93 claimant Paru claimed Rs. 2,60,000/-. The tribunal awarded total Rs. 2000/- only. In claim case No. 111/93 the injured Kanhaiyalal claimed Rs. 3,23,400/- but the tribunal rejected the above claim petition. In claim case No. 112/93 injured Keshrimal claimed Rs. 7,91,100/-. The tribunal awarded Rs. 10,000/- only and in claim case No. 113/93 the injured Magina claimed Rs. 3,29,100/- whereas the tribunal awarded Rs. 12,000/-.

6. The appellant has challenged the award passed in claim case 6f Keshrimal, Bherki, Magina, Paru, Nathi by filing these appeals and also filed separate appeals in two separate claim petitions.

7. Learned counsel for the appellant vehemently submitted that in this case the driver and owner specifically admitted by adopting the reply filed by the appellant before the claims tribunal regarding violations of the condition of the policy and violation of the statutory requirements. The non-claimant No. 1, Smt. Pushpa is the owner of the vehicle at the time of accident. The tribunal recorded in the order sheet itself that non-claimant No. 1 and 3 adopted the reply filed by the non-applicant No. 2, appellant-Insurance Company and when the defence taken by the appellant Insurance Company was accepted by the owner and driver of the vehicle. There was no reason for the appellant to produce any evidence and appellant can rely on the admission of the owner and the driver of the vehicle. According to the learned counsel for the appellant the issue No. 3 was also framed on the basis of the pleas taken by the appellant-Insurance Company and when there is admission of violation of condition of the policy of statutory provision then the Insurance Company is not liable to make payment of the claims.

8. Learned counsel for the appellant submitted that the driver of the vehicle was not having a valid driving licence and, therefore, in view of the decisions given in the case of United India Insurance Company Ltd. v. Gainchand and Ors. (1), and the judgment of the Punjab and Haryana High Court in case of Krishna Bus Service Pvt. Ltd. v. New India Assurance Co. Ltd. and Ors. (2), the Insurance Company cannot be held liable. Learned counsel for the appellant further submitted that when defence is taken by the Insurance Company with respect to the fact that driver was not having driving licence and driver failed to produce the licence, then Insurance Company is not liable. The learned counsel for the appellant also relied upon the judgment of Punjab and Haryana High Court,

reported in *New India Assurance Co. Ltd. Vs. Surinder Paul and Others*, So far as the legal position is concerned with respect to the proposition that in case the driver is not having valid driving licence then, in the given circumstances the Insurance Company can be held not liable for payment of the amount of the claim, but at the same time burden to prove this defence is upon the Insurance Company and the claimant is stranger to the grant of licence to the driver and grant of employment by the owner of vehicle to the driver. Therefore, when these facts are in the knowledge of the owner and when the defence is taken by the Insurance Company of violation of the condition of the Insurance Policy or the violation of the statutory requirement then it is for the Insurance Company to prove these facts by producing evidence. It is different matter that what should be the evidence of the Insurance Company but the Insurance Company is required to discharge its initial burden of proof by taking defence in the pleadings and by giving evidence in support of the defence taken in the pleadings. Here in this case, admittedly, no evidence was produced by the appellant-Insurance Company.

9. Now the question remains, what is the effect of submitting by the owner and driver of the vehicle that they are adopting the reply filed by the Insurance Company and whether by saying so by the owner and driver of the vehicle, how they are bound by the pleas taken by the Insurance Company, which is against the interest of the owner and the driver of the vehicle.

10. In claim cases the facts are very peculiar. The claimants are in very disadvantageous position and they may not have knowledge of the full facts; what was the contract between the owner of the vehicle with the Insurance Company; and what were the terms and conditions of the employment of the driver; and under what circumstances the vehicle of the owner was driven by the person who was driving the vehicle. Therefore, in number of cases it has been felt that burden lies upon the Insurance Company to prove the defence and non-appearance of the owner or the driver of the vehicle may not come in help of the Insurance Company. An issue if raised, then the principle of law is that in absence of the evidence of all the parties on the issue then who alleges, he will loose the issue. As observed above, for purpose of deciding the issue with respect to the violation of the conditions of the policy and the statutory provisions the claimant's role comes after leading of the evidence of the Insurance Company, owner and the driver. The right of claimant to have an award against not only driver or owner but against Insurance Company is a valuable right because this, in sum and substance, secures the payment of the claim also. The statutory provisions for having the insurance of the vehicle and its mandate is for the benefit of not only owner of the vehicle but also for the benefit of the claimants and this legislation is to help the aggrieved party and the benefit cannot be denied to the affected party lightly.

11. In this matter the strange thing is the acceptance of reply filed by the Insurance Company by the non-claimant No. 1 and 3. It is neither admission in

pleading nor that admission can be said to be an admission on oath. The circumstances in which the above reply was adopted is not before the Court even then this admission is only in favour of the co-non-claimant Insurance Company. But the claimants are not bound by the admission because of the reason that the claimants cannot be deprived of his valuable right of recovery of the amount from the Insurance Company. There may be cases where the driver and owner may not have any property from which the claimant can recover the claim amount and in such situation, by admission of one of the co-non-claimant in favour of another co-non-claimant will loose his entire claim amount.

12. Here in this case neither the tribunal passed the order on the basis of the alleged admission of the driver and owner nor the Insurance Company was exonerated by the Tribunal. Despite all above so called admission by recording adoption of the reply of the Insurance Company, the trial Court framed issue No. 3 specifically with respect to all the defences taken by the Insurance company. The claimants and the non-claimants, owner driver and also the Insurance Company were asked to prove the issue and the claimants proved their cases by evidence and the Insurance Company non-claimant, despite pleading the defences, did not chose to prove these facts constituting the defence against the claimants by giving any evidence. The burden was fixed upon the appellant Insurance company and it appears that it was not objected by the appellant Insurance Company. Therefore, if the appellant Insurance Company would have produced any evidence on issue No. 3 then and then only the claimants were required to give evidence in rebuttal to the defences taken by the appellant Insurance company. When the appellant Insurance Company did not produce any evidence in support of their pleas mentioned in all defences for which issue No. 3 was framed the claimants were deprived of their valuable right of giving evidence in rebuttal because the claimants could have produced evidence in rebuttal on the issue No. 3, in case, any evidence was produced by the appellant Insurance Company. Not only this but the claimants were deprived of their right to cross-examine the witnesses of the appellant insurance Company and of driver and owner of the vehicle. If the witness of the appellant company, the driver would have appeared, the claimant could have shown that under what circumstances the reply was not filed or it was adopted by the driver and owner of the vehicle or whether it was at all adopted or not, therefore, also the submission of learned counsel for the appellant that simply because the owner and the driver of the vehicle have adopted the reply of the Insurance Company the Insurance Company cannot be held liable affecting the right and interest of the claimants, cannot be accepted.

13. It will also be relevant to mention here that the defence taken by the Insurance Company in reply are all sorts of defences like; the vehicle was carrying more passengers then the capacity of the vehicle, it was violating the traffic rules, non giving information immediately by the insured, there was no fitness certificates, the driver was having no permission to drive the vehicle and also submitted that the appellant will be entitled to exercise his right u/s 170 of

the Motor Vehicle Act. Thereafter, it is also stated that appellant is taking shelter of Sections 147 and 149 of the Motor Vehicle Act. After taking all above possible defences, the appellant Insurance company stated that the appellant Insurance Company has not been provided with the copies of documents with respect to the accident. Therefore, after getting fully information and knowledge, the appellant i.e., Insurance company keeps their right to improve, expand and change the reply. The reply was verified by the officer of the appellant Insurance Company and in case of Keshrimal it is verified by one Sh. Vipin Kumar having the seal of Assistant Divisional Manager and, thereafter, shown as Divisional Manager in para for verification. The above pleas are verified to be true as per the personal knowledge of Sh. Vipin Kumar and as per the knowledge gathered from the documents available with the appellant office. When all above facts were in the personal knowledge of Vipin Kumar there was no reason for Sh. Vipin Kumar for not giving statement on oath before the tribunal when the facts were taken from the record then there was no reason for the appellant far non-producing the documentary evidence. Therefore, also the appellant failed to discharge the burden to prove issue No. 3.

14. Much emphasis has been put by the learned counsel for the appellant that when there is a specific plea that driver was not having the valid driving licence, therefore, in view of the judgments mentioned by the Insurance Company, the Insurance Company cannot be held liable and the burden was upon the driver and the owner of the vehicle to appear in the witness box to rebut the plea of the appellant Insurance Company. The above plea deserves to be rejected only on the ground that the initial burden was not discharged by the appellant by giving evidence on this fact so as to compel the driver and owner to rebut any evidence. But in addition to above, the plea taken by the appellant in the reply is that whoever was driving the vehicle was not having the driving licence. There is no specific pleading that the non-applicant No. 3 was the driver and he had no driving licence at the time of accident. The plea taken by the appellant Insurance Company also, on the face of it, clearly establishes that the same was taken absolutely without there being specific knowledge of the fact, which come from the reply itself. Therefore, if the contention of the learned counsel for the appellant is accepted that the non-claimants No. 1 and 3 admitted and adopted the reply of the appellant Insurance Company then that admission is also with respect to the fact that owner and the driver admitted that the facts are not in the knowledge of the appellant Company and, therefore, it is clear that alleged adoption of reply by the owner and driver of the vehicle is an admission in ignorance only which proves no fact.

15. No other point was raised.

16. In view of the above reasoning, I do not find any force in these appeals and the same are hereby dismissed.