
(2012) 05 DEL CK 0644
In the Delhi High Court
Case No : FAO. 736 of 2002

National Insurance Co. Ltd.		APPELLANT
	Vs	
Narmada Rai and Others		RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 112, 3, 8
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2013) ACJ 1642

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant;

Final Decision : Dismissed

Judgement

G. P. Mittal, J.—The Appellant impugns a judgment dated 03.09.2002 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby while awarding a compensation of Rs. 22,500/-, the Appellant's defence of breach of policy condition was rejected. It is urged by the learned counsel for the Appellant that the Respondent No.2 Adbul Qadir, the driver of the offending vehicle was challaned by the police for offences u/s 279 and 338 IPC apart from u/s 3 read with Section 112 of the Motor Vehicles Act, which sufficiently established that the driver did not possess a valid driving licence. It is urged that this indicates the breach of the condition of the policy was writ large. Appellant was, therefore, entitled to at least recovery rights against the insured.

2. The Claims Tribunal dealt with the question of breach of the policy condition in paras 16 and 17 of the impugned judgment, which are extracted hereunder:

16. Ld. counsel for respondent No. 3 has submitted that respondent No. 3 has no liability under the insurance contract to indemnify the respondent or to compensate the petitioner because this is a clear case of violation of terms and conditions of the insurance contract. He has submitted that as per the insurance

contract the offending car could be driven only by a person holding a valid driving licence. However, in this case respondent no. 1 was not holding a valid driving licence at the time of accident as it is apparent from the charge sheet Ex.P1 vide which respondent was also prosecuted for offence U/s 3/181 Motor Vehicle Act i.e. for driving the car without a licence. He has also submitted that though respondent No.1 appeared as RW-1 he neither produced his driving licence or its duplicate copy nor he supplied the particulars of that driving licence but he only came out with a vague explanation that after the accident he was beaten by public and his driving licence was snatched.

17. Even if it is assumed that respondent No. 1 was not having a valid driving licence, it would not help respondent No.3 because he has failed to prove the terms and conditions of insurance contract. In absence of those terms and conditions, it is not possible to conclude that there were any violation of terms and conditions of insurance contract by the insurer. Thus, I conclude that respondent No. 3 has failed to prove violation of insurance contract by respondent No. 2. Accordingly, respondent No. 3 is also under contractual as well as statutory obligation to compensate the petitioner for the damages caused to her. Thus, I conclude that all the three respondents are liable to compensate the petitioner for the damages caused to him.

3. The driver Abdul Qadir entered the witness box as RW1. He testified that after the accident, he was beaten by the public and his driving licence was snatched. In cross-examination, no suggestion was given to RW1 that his driving licence was not snatched by the public. He was not questioned if he made any effort to obtain a duplicate driving licence. In the circumstances, it was difficult to say that the driver did not possess a valid driving licence on the date of the accident.

4. On top of it, the Appellant Insurance Company failed to prove the breach of the condition of the insurance policy and, therefore, as held by the Claims Tribunal could not avoid the liability.

5. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The Appeal is devoid of any merit; the same is accordingly dismissed.