

(2008) 12 DEL CK 0062
In the Delhi High Court
Case No : MAC App. No. 597 of 2008

National Insurance Co. Ltd.	Vs	APPELLANT
Shri Ram Vir, Mohd. Salim and Ayub Khan		RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2), 145, 147(3), 149(2)

Citation : (2009) 5 ILR Delhi 1

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Pradeep Gaur and Amit Pandey, for the Appellant; Nemo, for the Respondent

Judgement

V.B. Gupta, J.—Present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as "Act") has been filed by the appellant-Insurance Company against the award dated 6th August, 2008 passed by Shri J.P.S. Malik, Judge, MACT, Delhi (for short as "Tribunal").

2. The brief facts of this case are that Sh. Ram Vir, injured on 30th May, 2005 at about 9:30 PM was returning on his bicycle and was on 100 feet road, Chattarpur, when he was hit by a trolley bearing No. HR-55-B-8011, which was being driven on the wrong side. Because of this, the injured fell down on the road along with his bicycle and sustained grievous injuries. He was admitted at AIIMS Hospital, where he was given treatment.

3. The claimant filed the claim petition against the respondent No. 2 herein being the driver of the offending vehicle, respondent No. 3 herein, being the owner of the offending vehicle and appellant herein, as the offending vehicle is insured with them.

4. Notice of the petition was issued to the respondents.

5. Respondent Nos. 2 & 3 did not appear despite service and were proceeded ex parte on 22nd September, 2005.

6. Only Appellant contested the Petition.

7. Vide impugned judgment, the tribunal passed an award for a sum of Rs. 2,33,600/- along with simple interest @ 9% per annum from the date of filing till realization in favour of claimants and against appellant and respondent No. 2 and 3. Appellant was given recovery rights in this case.

8. It has been contended by the learned Counsel for appellant that it has proved the breach of terms and conditions of the insurance policy on the part of the insured/owner, as the driver was not holding licence to drive the offending vehicle and as such the order is liable to be modified.

9. It is also contended that the driver was holding a licence to drive light motor vehicle while he was driving HGV, that is, trailer which weighs 10,200 kg and is covered under 'Heavy Goods Vehicle' i.e. HMV and thus the appellant is not liable to indemnify.

10. Learned Counsel for the appellant further contended that the Tribunal contrary to its own findings, on one hand has held that on the date of accident i.e. 30.5.2004, respondent No. 2 was not having a driving licence, while on the other hand it directed the appellant to pay the awarded amount and then recover the same from the insured/owner of the offending vehicle. These findings of the Tribunal are liable to be modified in light of the judgment passed by the Apex court in National Insurance Co. Ltd. Vs. Kusum Rai and Others, . This Court has also held this view as correct in a recent judgment passed in National Insurance Co. Ltd. v. Hari Chand and Ors. FAO No. 476/2003.

11. For the purpose of determination of the above said issue, relevant provisions of the Act may be considered.

12. Section 2(28) of the Act, defines the term Motor Vehicle". It reads as under;

motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding ["twenty-five cubic centimetres"]

13. Section 2(21) of the Act defines the term light motor vehicle" as under;

"light motor vehicle" means 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 7500 kilograms;

14. A plain reading of Section 2(21) of the Act shows that light motor vehicle" includes a transport vehicle" but it nowhere says that transport vehicle" also includes light transport vehicle". The transport vehicle" has been defined in Section 2(47) of the Act.

15. Section 2(47) of the Act defines the term transport vehicle" as under;

transport vehicle" means a public service vehicle, a good carriage, an educational institution bus or a private service vehicle;

16. Sub-section (10) of Section 2 of the Act defines "driving licence" as under;

driving licence" means 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;

17. Section 10 of the Act prescribes form and contents of licences to drive, which reads as under;

Forms and contents of licences to drive-

(1) Every learner's license and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

18. This provision shows that for driving transport vehicle a person needs to have a licence of that category.

19. This plea that the offending vehicle was registered as Heavy Goods Vehicle i.e. HMV and the unladen weight of the insured vehicle was 10,200 Kg. was not raised before the Tribunal and is being raised for the first time in this appeal.

20. It is well settled that:

no amount of evidence can be looked into upon a plea which was never put forwarded.

See AIR 1930 57 (Privy Council)

21. There is nothing on record to show that the offending vehicle was "Heavy Goods Vehicle", though in the grounds of appeal, it has been pleaded that the

driver was holding licence to drive Light Motor Vehicle, where as he was driving HGV i.e. trailer.

22. The Tribunal on this issue held that:

The accident has taken place on 30.5.2004 at about 9.30 PM whereas licence valid to drive transport vehicle was obtained by R1 on 31.5.2004 and in cross examination, R3W2/Prem Shankar has deposed that the application for issuance of transport licence was given on 31.5.04 itself, the driving test of R1/Mohd. Salim was taken on 31.5.04 and licence issued on 31.5.04. Thus, it is clear that on 30.5.04 at the time of accident, R1 was not having a valid driving licence to drive a transport vehicle which was a case while driving trailer No. HR55B-8011. Thus, R3/insurance company can not be fastened with the liability to pay the compensation to the petitioner. However, being the insurer, award amount shall be paid first by R3/insurance company to the petitioner and thereafter, R3/insurance company shall be entitled to recover the award amount from R3, the owner of the offending vehicle and insured.

23. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Apex Court has observed as under;

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.

The Apex Court further in paragraph 47 of the judgment, held that;

If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

In paragraph 48, the Apex court has observed as under;

Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by

Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

The Apex court has observed as under;

Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be.

24. In *Hardayan Singh v. Chiranji Lal and Ors.* 1 (2003) ACC 114, Punjab and Haryana High Court has observed as under;

Once, a licence can be granted by virtue of provisions contained in Section 10 only with regard to kind of vehicles or type of vehicle, enumerated therein, the mere fact that in the licence of appellant scooter/motor cycle/car/jeep were mentioned, would be of no consequence. It shall be considered to be driving licence for a Light Motor Vehicle and tempo, as per definition of Light Motor Vehicle, as contained in Section 2(21) of the Act of 1988, would be a light motor vehicle. The definition of Light Motor Vehicle apart, it does not sound to reason even otherwise that a person, who is issued a valid licence to drive a car/jeep, could not drive a tempo. There is no special training that may be required to drive a tempo which may be different in material details for driving a jeep/car. The mechanism of all these vehicles is practically same. The distinction in driving various kinds of vehicles and grant of licence thereof is primarily when such vehicles are different in mechanism and require different kind of training.

25. In *Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others*, , the Apex Court opined:

8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in *Baljit Kaur's* case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was

no dispute raised, to the respondents-claimants within three months from today. The 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 is decided against the owner and in favour of the insurer. Before release of the amount to the insured, 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 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. The appeal is disposed of in the aforesaid terms, with no order as to costs.

26. Similarly, in *Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others*, , it has been held that;

In the light of the above settled proposition of law, the appellant-insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act. In the result, the appeal is allowed to the limited extent and it is directed that the appellant-insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz, respondent No. 8 particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this court to contest this appeal. This direction is given in the light of the judgments of this Court in *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, and *Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.*, .

27. Under the circumstances, though in the present case, the appellant-Insurance Company is not liable to pay the amount of compensation but in the nature of this case it shall satisfy the award and shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimant within three months from today. That 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 is decided against the owner and in favour of the insurer. Before release of the amount to the claimant, 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 claimant. The offending vehicle 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. This direction is given in the light of the Judgments of the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., .

28. Thus, the appeal is disposed of in the aforesaid terms.

29. No order as to cost.

30. Copy of this Judgment be sent to Tribunal for compliance.