
(2003) 09 DEL CK 0048
In the Delhi High Court
Case No : FAO No. 594 of 2002

National Insurance Co. Ltd. APPELLANT
Vs
Smt. Kanta Rani Juneja and Others RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2004) 1 ACC 116 : (2003) 8 AD 34

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : P.K. Seth, for the Appellant; K.K. Khaitan, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Mahajan, J.—ADMIT.

2. With the consent of the parties, matter has been heard and disposed of by this order.

3. The appellant-insurance company has filed this appeal to challenge the award of the tribunal whereby the tribunal has directed the insurer to satisfy the award despite the driver of the offending vehicle did not having a valid driving license to drive the heavy transport vehicle on the date of the accident. The contention of Mr. Seth appearing on behalf of the appellant is that as there being a willful breach of the conditions of contract of insurance by the insured by permitting the driver who did not have a valid driving license to drive the heavy transport vehicle, the insurance company could not be held liable to pay compensation under the award to the claimants. It is also submitted that even assuming the insurance company was liable to pay compensation under the award, the tribunal ought to have given a direction to the insured to pay such compensation to the insurance company. For this, Mr. Seth has placed reliance upon the observations of the Supreme Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., .

4. In *New India Assurance Co. Ltd. Vs. Kamla and others* (supra), it was held that the insurer and the 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 license. Though, it was contended by learned counsel for the insured in that case that it was enough if he establishes that the insured had made all due enquiries and believed bona fide that the driver employed by him had a valid driving license, in which case there was no breach of the policy condition, however, as the Supreme Court had not decided on that contention it was left open to the insured to raise this plea before the Claims Tribunal. It was held that, if the Insurance Company succeeded in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer and 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.

5. In another judgment reported as *United India Insurance Company Ltd. Vs. Lehu and Others*, the Supreme Court has held that when an owner was hiring a driver, he will have to check whether the driver has the driving license and if the driver produced the driving license, which on the face of it looks genuine, the owner is not expected to find out whether the license has, in fact, been issued by the competent authority or not. It was held that where the owner had satisfied himself that the driver had a license and was driving competently, there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act and the insurance company would not then be absolved of its liability, however, if it ultimately turns out that the license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the license was fake and still permitted that person to drive the vehicle.

6. In the present case, the tribunal has given a categorical finding that as on the date of the accident, the driver had a license to drive only Light Motor Vehicle and it was only on 2.5.1997 that the license was endorsed for driving the Heavy Traffic Vehicle as well. At the time of the accident, the driver was driving a heavy vehicle and as he did not have a valid driving license on the date of the accident, and if the owner had seen the driving license at the time of engaging the driver he must be aware that the driver did not have a valid driving license to drive the heavy traffic vehicle. There is thus clearly a breach of the conditions of policy of insurance by the insured. While, Therefore, the insurance company has to satisfy the award by making payment of compensation to the claimants, it has a right to recover such amount from the insured. Though, the tribunal has held that the insurance company is entitled to recover the compensation from the insured, it is not clear as to in which forum the insurance company would be able to recover the said amount of compensation. Contention of learned counsel for the insured/

respondent No. 1 is that despite the aforesaid observations of the Tribunal, the appellant, in terms of the judgment of the Supreme Court, will still have to prove that the insured was aware that the driver did not have a valid driving license to drive the vehicle to recover the amount of compensation from the insured and for that it will have to file a suit. I do not agree with this submission. Tribunal has already held that the driver on the date of the accident had the license to drive only light motor vehicles and endorsement to drive heavy transport vehicles was made much later in 1997. Once this finding has been given by the tribunal, the insured is liable to reimburse the insurance company who has paid compensation to the claimant, under the award and insurance company cannot be forced to initiate another litigation for recovery of the amount of such compensation from the insured. In my view, the insurance company can recover the said amount by execution of the award of the tribunal.

7. I, accordingly, partly allow this appeal and modify the award only to the extent that the insurer is directed to pay the amount of compensation to the insurance company and on its failure to pay, the insurance company can execute the award against the insured in a manner provided by the law. With these observations, this appeal stands disposed of.