
(2012) 12 DEL CK 0241
In the Delhi High Court
Case No : Mac. App. 1289 of 2012

National Insurance Co. Ltd.		APPELLANT
	Vs	
Smt. Prem Wati and Others		RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0241

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

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

C.M. APPL No. 21032/2012(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

MAC. APP. 1289/2012

1. This Appeal is directed against a judgment dated 29.08.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 89,315/- was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 15.01.2011. Learned counsel for the Appellant Insurance Company states that quantum of compensation awarded by the Claims Tribunal is not challenged by the Appellant Insurance Company.

2. The only ground of challenge to the impugned judgment is that Respondent No. 11 (the owner) committed a breach of the terms and conditions of the policy as the driving licence possessed by Respondent No. 10 (the driver of the offending vehicle) was fake.

3. The Claims Tribunal dealt with the issue of breach of the terms and conditions of policy in Para 23 of the impugned judgment, which is extracted hereunder:-

23. The Insurance Company has raised the defence that the vehicle was being plied without valid D/L. The Insurance Company has relied heavily on the report of the RTA, Mainpuri, received pursuant to the summons sent wherein it had been reported that the driver was competent only to drive a private vehicle and the DL annexed along with the summon, reflects that he had been authorized to drive a HTV, had not been issued by the above mentioned RTA. However, in this respect, the statement made by the owner gains significance as he stated that the driver had informed him that his D/L had been valid and genuine. He in the cross-examination, denied the suggestion that at the time of employment, he had not seen the D/L of the driver. The owner has thus put the onus back on the Insurance Company to reflect that there had been a breach on the part of owner and the breach of policy conditions was willful and deliberate and/or at least in the knowledge of the owner, Pankaj Gupta when he employed the driver, Sanjiv Kumar to ply the vehicle. It is settled law that the owner is not required to travel extra mile to seek verification of D/L when the same is shown at the time of employment and/or seek its verification from the RTA. It is sufficient if from his side, he has exercised common prudence reasonably and has obtained the copy of D/L shown to him by the driver and has checked the same. There is nothing on record to reflect that the owner was aware about the factum that the D/L was not genuine despite which he allowed the driver to ply the offending vehicle. There is also nothing on record to reflect that the driver was not tested by the owner qua his ability to drive the offending vehicle and he was not satisfied despite which he took the risk of handing over the offending vehicle to him. From the owner's side, he has shown sufficient wisdom and accordingly in view of the settled provisions in case titled, Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, , I am of the view that the Insurance Company has not proved that the default of terms and conditions has been made willful and accordingly, the prayer of the Insurance Company for rights to recover the award amount from the driver/owner, is declined.

4. Thus, it would be seen that the owner had seen the driving licence possessed by the driver and was satisfied about its genuineness before appointing him as a driver. Nothing was placed on record by the Appellant Insurance Company which would suggest that there was willful breach of the terms and conditions of policy.

5. The conclusion reached by the Claims Tribunal is inconsonance with the settled proposition of law (see United India Insurance Company Ltd. Vs. Leheru and Others, , Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others,).

6. The learned counsel for the Appellant Insurance Company submits that there was delay in deposit of the award amount and the Claims Tribunal directed payment of interest @ 12% per annum for the period of delay.

7. If the amount is deposited by the Appellant Insurance Company within a period of four weeks with the Claims Tribunal with an advance notice to the First Respondent, the Claims Tribunal's order awarding penal interest @ 12% per annum for the delayed period shall not take effect.

8. The Appeal is dismissed in above terms.

9. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company after proof of deposit of the award amount is filed with the Registrar General of this Court. Pending Applications stand disposed of.