(2018) 06 CHH CK 0163

In the Chhattisgarh High Court

Case No : M. A. (C) No. 379 Of 2012

National Insurance Company Limited APPELLANT

Vs

Amarnath Sharma And Ors RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(ii), 163A, 166, 174

Citation : (2018) 06 CHH CK 0163

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Qamrul Aziz, J. K. Saxena, Arun Shukla

Final Decision : Dismissed

Judgement

Parth Prateem Sahu, J

1. The instant appeal is preferred by the appellant/Insurance Company (insurer of the offending vehicle) challenging the legality and validity of the impugned award dated 05/01/2012 passed by the Motor Accident Claims Tribunal, Jashpur, Chhattisgarh (in short 'Claims Tribunal') in Motor Accident Claim No.23/2010, wherein the learned Claims Tribunal passed the award of Rs.3,31,443/- in favour of the claimant on the ground that the learned Claims Tribunal failed to consider the fact that on the date of accident, the driver of the offending vehicle was not having a valid and effective driving licence.

2. The Brief facts of the case are that on 24/12/2009 at about 2.00 PM, when respondent No. 1 was standing at Bus Stand Kansabel, District Jashpur, at that relevant time, the Bus bearing registration No. OR16/B/3955 (offending vehicle) of Radheshyam Bus Service, driven by respondent No. 2 dashed him, due to which, he fell down and came under the wheel of the offending vehicle. In the aforesaid accident, his left leg was badly injured and he also suffered injury over the right knee. The claimant was admitted to the Hospital and during the course of treatment; his left leg was amputated below the knee. On that count, the

claimant/respondent No.1 filed claim petition before the competent Claims Tribunal claiming Rs.31,51,074/- in total on the different heads.

3. The respondent No. 2 herein was owner of the bus and respondent No. 3 herein was the driver of the bus, but after service of notice, they did not appear before the learned Claims Tribunal and were proceeded exparte.

4. The appellant/Insurance Company, who was respondent No. 3 before the learned Claims Tribunal submitted its reply, in which, it has pleaded that the copy of the driving licence produced before the Claims Tribunal was not issued in favour of Anthoni Barwa and the same is forged document and prayed for its exoneration from payment of the compensation of any amount as the vehicle on the date of accident was driven in violation of the conditions of the insurance policy.

5. The learned Claims Tribunal while considering the material available on record including the evidence led by the parties before it, has held that the Insurance Company was failed to prove the violation of the conditions of the insurance policy as the driving licence submitted before the learned Claims Tribunal has not been verified in accordance with law and therefore, the learned Claims Tribunal had awarded Rs.3,31,443/- to the injured claimant/respondent No. 1 on different heads as mentioned in the award by fastening the liability on Insurance Company.

6. The appellant/Insurance Company raised the only ground that the learned Claims Tribunal had failed to consider the evidence and material available before the learned Claims Tribunal with regard to the licence and the witnesses i.e. NAW-3(1) Bharat Bhushan Das, who is the Administrative Officer of the Appellant Company and NAW-3(2) Asgar Ali Khan, who is the Assistant Grade-I of the Regional Transport Office, Bilaspur, in its entirety and held that the appellant/ Insurance Company had failed to prove that the licence produced before the Claims Tribunal is a fake licence.

7. Per contra, learned counsel appearing for respondents supported the award and submitted that the learned Claims Tribunal after considering the material and evidence available on record has rightly fastened the liability upon the appellant/ Insurance Company to pay the compensation and it does not require any interference.

8. I have heard the learned counsel appearing for the appellant/Insurance Company and learned counsel appearing for respondents No. 1 and 2 and perused the record carefully.

9. For appreciating the submissions of the counsel appearing for the appellant/ Insurance Company, I have perused the copy of licence, which is Ex. P-3, in which, name of the driver has been mentioned as Anthoni Ram. On confronting with that document, NAW-3(1) Bharat Bhushan Das has stated that there is no licence in the office with the name of Anthoni Barwa and the letter sent to the Regional Transport Office, Bilaspur for verification of licence by mentioning the

name as Anthoni Barwa. Considering the document Ex. P-3 and the statement of NAW-3(2) Asgar Ali Khan, it is evident that the driver's name in Ex. P-3 is Anthoni Ram and not Anthoni Barwa, but the name of the person which has been sent for verification to the Regional Transport Office, Bilaspur is some other name as Anthoni Barwa. In view of the aforementioned fact, the appellant/Insurance Company had not made proper efforts to bring any material showing that the respondent No.3 Anthoni Ram was not possessing the valid and effective driving licence on the date of accident as his name was not sent for verification particularly, when the licence (Ex. P-3) bears endorsement of the renewal of the licence on several occasions. Further considering the evidence of appellant's witness NAW-3(1) Bharat Bhushan Das, who in para-5 has stated in categorical terms that he had sent the name of Anthoni Barwa for verification of the driving licence. He further admits that along with the name of the person, he had not mentioned or sent the details of his father's name or his address. The other witness examined by the appellant/Insurance Company is NAW-3(2), Asgar Ali Khan, who in para-5 has stated that in his office, the application has been forwarded only with regard to the verification of licence of Anthoni Barwa and there is no application for verification of licence of Anthoni Ram, who is respondent No.3 (driver of the offending vehicle on the date of accident). He further in para-8 admits that the copy of the licence was not sent to his office for verification.

10. From the aforementioned discussions, it is apparent that the appellant/ Insurance Company had not sent proper details of the driver mentioned in the driving licence for its verification, therefore, it cannot be said that the appellant/ Insurance Company had verified the driving licence of the driver available on record in accordance with law and had got the report that the licence with the description of respondent No.3 was not available in the Office of Regional Transport Office, Bilaspur and to say that the driving licence submitted in the records of the Motor Accident Claims Tribunal is a fake one. The learned Claims Tribunal had very elaborately dealt with the material and evidence available on record and has rightly held that the appellant/Insurance Company failed to prove violation of conditions of Insurance Policy. Even otherwise if the facts of the case is considered in the light of the law laid down by the Hon'ble Supreme Court in the matter of National Insurance Co. Ltd. v. Swaran Singh and Others reported in (2004) 3 SCC 297, wherein the Hon'ble Supreme Court while dealing with the issue of fake licence, has held as under :-

"110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub- section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

11. In the light of aforementioned law laid down by the Hon'ble Supreme Court in Swaran Singh (supra), while considering the facts and circumstances of the case in hand, it will reveal that the appellant/Insurance Company had not raised any ground in its pleadings with regard to the breach of policy conditions, which have been committed by insured for avoiding the liability and further that the appellant has also failed to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time, but have casually taken the plea by mentioning that the driving licence placed on record is a fake driving licence, which cannot be acceptable.

12. In view of the aforesaid discussions, I do not find any error on the part of the learned Claims Tribunal in passing the impugned award against the appellant/ Insurance Company and further that the appellant/Insurance Company also

failed to make out any case for interference. The appeal is devoid of merits, the same is liable to be and is hereby dismissed.

13. No order as to costs.

