

(2006) 03 P&H CK 0122
In the Punjab And Haryana At Chandigarh

National Insurance Company Limited	Vs	APPELLANT
Pappu and Others		RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2006) 3 ACC 309

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The National Insurance Company is in appeal against the award dated 7.11.2005, passed by the Motor Accident Claims Tribunal, Fast Track Court, Sonapat (for brevity, "the Tribunal"). The Tribunal has found that the unfortunate deceased Geeta was killed in the accident due to rash and negligent driving of the driver Jaswant Singh-respondent No. 2. He was driving TATA-407 bearing Registration No. HR-16GA-0299, which was owned by respondent No. 4 and was insured with the appellant-Insurance Company. The accident has resulted in premature termination of life of 15 years old Geeta. The claimant-respondent Nos. 1 and 2 are her grief-stricken parents. In support of the finding that the accident was caused by rash and negligent driving of the driver of TATA-407 bearing No. HR-16GA-029, the Tribunal has placed reliance on the oral testimony of witnesses as well as the FIR. The age of the deceased has been found to be 15 years at the time of accident. The income of the deceased was claimed to be Rs. 1,500 per month as she was helping in dairy farming. However, it could not be disputed that loss of the claimant-respondent Nos. 1 and 2, who are parents was irreparable. Placing reliance on a judgment of this Court rendered in the case of Oriental Insurance Company Limited v. Inderjit Kaur I (1998) ACC 1 (SC) : 2002 (1) ACJ 283 it has been held that there was no question of working out annual income in such like cases as loss to the parents is irreparable. In the cited judgment a girl of 10 years of age was killed and a sum of Rs. 1,53,000 to the parents of the girl was awarded. Accordingly, the Tribunal has awarded Rs. 1,55,000, which by no stretch of imagination could be considered to be excessive.

2. The argument of the appellant-Insurance Company that a permit/route permit was required by the offending vehicle has been rejected by holding that the statutory defences envisaged by Section 149(2) of the Motor Vehicles Act, 1988 (for brevity, "the Act") are although available to the appellant-Insurance Company, yet the same are required to be proved. Accordingly, the Tribunal rejected the argument by observing as under:

....No doubt, Insurance Company moved an application for seeking a direction against respondent Nos. 1 and 2 for production of route permit, but the learned Counsel for respondent Nos. 1 and 2 suffered a statement before this Tribunal that respondent No. 2 is bed ridden and as such could not be contacted to produce the route permit. As a result of this, route permit was not produced on record by respondent Nos. 1 and 2, but Insurance Company also did not make any efforts in this case to get the route permit produced or to get any record produced that the respondent No. 2 was not having a valid route permit. The circumstances attending the case are such that it cannot be held that respondent No. 2 was not having any route permit because both the parties have led shallow evidence in this regard. In the absence of there being any specific evidence no benefit can be given to the Insurance Company and it cannot be concluded that respondent No. 2 was not having a route permit when it was the bounden duty of Insurance Company to get some documents produced on record in this regard....

3. The Tribunal placed reliance on a judgment of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

4. Mr. V.K. Kapur, learned Counsel for the appellant-Insurance Company has raised the same argument before us asserting that an appropriate application for issuance of direction to the driver and owner (respondent Nos. 3 and 4 respectively) to produce the route permit was filed but the same could not be produced as owner respondent No. 4 was bed ridden and could not be contacted to produce the route permit. According to the learned Counsel an adverse inference must be drawn that owner respondent No. 4 did not possess route permit and, therefore, the defence u/s 149(2) of the Act would be fully available to the appellant- Insurance Company.

5. Having heard the learned Counsel, we are of the view that there is no merit in this appeal and the same is liable to be dismissed. It has been proved by cogent evidence on record that on account of rash and negligent driving of Jaswant Singh, respondent No. 3, an adolescent girl of 15 years of age was crushed to death prematurely. Her unfortunate parents have been awarded a meagre sum of Rs. 1,55,000 on the basis of a judgment of this Court in the case of Inderjit Kaur (supra) It has also been found that Jaswant Singh, driver-respondent No. 3, carried a valid driving licence and the verification report was placed on record as Ex. R-6 by the appellant-Insurance Company itself. According to the Registration Certificate of the offending vehicle, it has been described as "Light Traffic Vehicle", which was permitted to be driven by a person holding a valid driving licence. The awarded amount is to carry interest @ 6% per annum from the date

of filing the claim petition till realisation. Therefore, we do not find any legal infirmity in the view taken by the Tribunal.

6. The argument of the learned Counsel with regard to statutory defence of requirement of route permit in respect of the offending vehicle is absolutely devoid of merit and is liable to be rejected because it is the duty of the appellant-Insurance Company to prove the absence of permit and its legal requirement. It is well settled that the defences available to the appellant-Insurance Company are confined to those which have been referred to in Sub-section (2) of Section 149 of the Act, particularly with regard to liability towards third party. The breach of condition of a policy committed by the insured like non-issuance of a licence/permit has to be proved by the Insurance Company if it wishes to avoid liability. In this regard, reliance may be placed on a judgment of Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . In sub-paras (iii) and (iv) of para 110 of the judgment the following summary of finding has been recorded and the same reads as under:

(iii) The breach of policy condition e.g. disqualification of the 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 a duly licensed 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 where for would be on them.

7. The aforementioned view is further fortified by another judgment of the Hon'ble Supreme Court in the case of Challa Bharathamma (supra) on which reliance has also been placed by the Tribunal. It has been opined that although defence of a valid permit is available to the appellant-Insurance Company, yet, it has to be proved as a fact that such a permit was not possessed by the "insurer.

8. In the present case, except for filing an application for production of permit no efforts has been made by the appellant-Insurance Company to prove the absence of permit. Even the witnesses have not been cross-examined on the aforementioned lines nor any such effort has been made by filing application under Order 41 Rule 47 of the Code of Civil Procedure, 1908, before this Court. Therefore, the argument is devoid of merit and is hereby rejected.

9. For the reasons aforementioned, this appeal fails and the same is dismissed.