

(2002) 07 JH CK 0018
In the Jharkhand High Court
Case No : M.A. No. 77 of 2001

National Insurance Company Ltd.

APPELLANT

Vs

Atar Khatoon and Others

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2003) ACJ 644

Hon'ble Judges : V.K. Gupta, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : P.C. Roy, for the Appellant; H.K. Mehta and P.K. Nayak, for the Respondent

Judgement

1. Delay in filing the appeal is condoned.
2. The only point involved in this appeal, as filed by the appellant-Insurance Company is that on the date of accident the driver of the offending vehicle did not possess a valid driving licence. Actually what we see from the perusal of the judgment under challenge in this appeal is that the accident in question occurred on 21.3.1996 and as per the witness of the appellant before the Tribunal the driver did possess a valid driving licence which however, was not renewed between 2nd March, 1996 to 24th March, 1996 and was renewed on 25th March, 1996. The accident in question having occurred on 21st March, 1996, according to the appellant, it should be considered that as on the date of the accident the driver did not possess a valid driving licence. For the reasons that we take hereinafter, we in this appeal need not go into the merits of the aibresaid contention or the validity of the argument of the learned counsel for the appellant.
3. In the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , while dealing with the question with respect to Section 149 of the Motor Vehicles Act, 1988 particularly in view of Sub-sections (2) and (4) thereof their Lordships of the Supreme Court have clearly held that even though an insurer

may be entitled to avoid his liability quo the insured on the ground that as on the date of accident the driver of the offending vehicle did not possess a valid driving licence, the insurer had nonetheless to pay the awarded amount to the claimant only on account of the fact that as far as the claimant/3rd party is concerned liability of the insurer cannot be absolved. The following observations in the aforesaid judgment being apposite are quoted herein-below. These reads thus :--

"21. A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of Insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this : When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third party, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

4. Drawing a comparison between the corresponding provisions of the Motor Vehicles Act, 1939 and Section 149 of the Motor Vehicles Act, 1988 and relying upon the observations of the Supreme Court in an earlier judgment their Lordships held as under :--

"23. It is advantageous to refer to a two Judge Bench of this Court in *Skandia Insurance Company Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judges pointed out that the Insistence of the Legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arriving from use of motor vehicles. It is pointed out in the decisions that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependents of the victims) of the accident. This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of Insurance."

Summing up the legal position thus, It was observed as under :--

"25. The position can be summed up thus : The insurer and 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 the 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 licence. Learned counsel for the insured contended that it is enough, if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the insurance company succeeds in establishing that there was breach of the policy conditions, the Claims Tribunal shall direct the insured to pay that amount to the Insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants-third parties) from the insured persons."

5. Because of the aforesaid settled position of law, therefore, we have no hesitation in observing and holding that notwithstanding any dispute with respect to the validity of the driving licence, the appellant-insurance company is liable to pay the awarded amount to the claimants. That liability cannot be avoided by taking recourse to Section 149 of the Motor Vehicles Act, 1988 because even if Section 149 is invoked by the appellant- insurer such invocation has to be only qua insured and it is not applicable as far as the third party claimant is concerned. Of course, as far as insurance company is concerned it is always open to the appellant-insurer to claim the amount that it has had to pay to the claimants, from the insurer, if it succeeds in establishing that as on the date of the accident the driver did not possess a valid driving licence.

For the reasons aforesaid this appeal is dismissed. It is directed that minus whatever amount has already been paid or deposited in this Court, the appellant-insurance company shall pay the awarded amount with interest @ 6% to the claimant within four weeks from today. If it fails to make such payment within the aforesaid period the liability to pay interest on the awarded amount shall stand increased from 6% to 16%.

6. Based on our aforesaid observations and the law laid down by the Supreme Court in the aforesaid judgment in the case of New India Assurance Company Ltd. v. Kamla & Ors., (supra) it shall be open to the appellant-insurer to file an application before the Tribunal against the insured for the recovery of the amount. If the appellant files such an application within six weeks from today the Tribunal shall entertain the same and proceed to dispose it of on its merits and in accordance with law.

Whatever amount has been deposited by the appellant in this Court shall be remitted by this Court to the Tribunal for disbursement to the claimant in accordance with the terms contained in the award.