(2007) 07 DEL CK 0183

In the Delhi High Court

Case No : M.A.C. App. No. 230 of 2004

National Insurance Company Ltd. APPELLANT

Vs

Dinesh Arora RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Citation : (2009) 155 PLR 37

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Arvind Dhingra, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Instant case relates to the insured permitting a minor to drive a motor vehicle who was not possessing any licence at all.

2. Culpable violation of the term of policy of insurance is writ large.

3. Learned Tribunal has relied upon the decision of the Supreme Court reported as National Insurance Co. Ltd. Vs. Swaran Singh and Others, to hold that the Insurance Company has to first satisfy the award and thereafter recover the same from the insured.

4. In my opinion, decision in Swaran Singh''s case would not apply for the reason in said case the Supreme Court was dealing with the issue of take driving licence and related issues and in respect thereof opined as to under what circumstances could it be said that the insured, knowingly and willingly permitted vehicle to be driven by a person not possession or holding a valid driving licence.

5. Needless to state, where a driver shows to the owner a driving licence, a physical look at the licence may reveal nothing suspicious and since there is no law that he who employs a driver has to go to the Road Transport Authority to verify whether licence produce by the driver was indeed issued by said authority, Supreme Court held that insurance companies would have to establish not only

mat the licence possessed by the driver was fake but additionally that the owner knew about the said fact.

6. In the instant case, admittedly, the owner permitted the vehicle to be driven by a minor who did not possess a valid licence.

7. A learned single judge of the Himachal Pradesh High Court in the decision reported as Sachin Kumar Vs. Chuni Lal, has taken a view in similar circumstances that Insurance Company is not liable to satisfy the award.

8. I adopt the reasoning of the learned single Judge of the Himachal Pradesh High Court.

9. Appeal stands disposed of absolving the appellant the liability to pay any money to the claimants as per the award. Entire liability to satisfy the award would be that of the owner of the vehicle.

10. I note that as per order dated 11.4.2005 appellant was directed to deposit the awarded amount, out of which Rs. 5 lacs was directed to be paid over to the claimant with interest. I accordingly direct that balance amount lying in deposit, be it with this Court or be it with Trial Court, would be returned to the appellant together with accrued interest. Appellant would be entitled to recover the sum received by the claimants pursuant to the order dated 11.4.2005. It would be equally open to the Insurance Company to recover from the insured the said amount received by the claimants, provided the Insurance Company files an affidavit before the learned Judge MACT that it would not seek recovery of the amount received by the claimants pursuant to the order dated 11.4.2005.

11. LCR be returned.

12. No costs.