

(2007) 03 UK CK 0052
In the Uttarakhand High Court
Case No : A.O. No. 17 of 2003

National Insurance Company Ltd.

APPELLANT

Vs

Saeed Ahmad and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(7), 166, 168(3), 174

Citation : (2007) 03 UK CK 0052

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : B.K. Gupta, for the Appellant; Lok Pal Singh and D.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri B.K. Gupta, counsel for the Appellant, Sri Lok Pal Singh, counsel for the Respondent No. 1 and Sri D.K. Sharma, for the Respondent No. 6.

2. This is an insurer's appeal against the judgment and award dated 28-10-2002 passed by the Motor Accident Claims Tribunal, Haridwar.

3. Briefly stated the Respondent No. 1 Saeed Ahmad filed a claim petition u/s 166 of the M.V. Act, for the grant of compensation on account of his sustaining injuries in a motor vehicle accident.

4. According to the claimant on 28-5-1998 he was travelling by Bus No. H.P.K. 2215 from Roorkee to Bahadrapad. At 2.30 PM when the bus reached near village Shantershah, a truck No. DCIGA 5754, which was being driven by Manjeet Singh rashly and negligently due to which the truck collided with the bus and claimant sustained serious injuries. He was rushed to hospital at Roorkee from where he was referred to Tripathi Nursing Home, Haridwar.

5. Opposite parties Rambir Singh and Ashok Kumar who are bus driver and

owner of the bus respectively, have filed their joint written statement and denied the claim of the claimant Saeed Ahmad. Respondent Oriental Insurance Company has admitted that the bus was insured with it but it was not responsible to pay compensation as the accident had taken place due to sole negligence of the truck driver.

6. Appellant the National Insurance Company has filed the written statement and alleged that at the time of accident the driver of the truck had no valid driving licence and as such the insurance company is not liable to pay compensation.

7. Sri Charan Jeet Singh who is the owner of the truck and Manjeet Singh who is the driver of the truck, were served but they did not contest the claim petition.

8. The claimant examined himself as P.W.1 and Smt. Salama as P.W.2 and has filed medical certificate, X-Ray plates and cash memo of medicines. The Appellant insurance company has filed survey report and detective report.

9. The Claims Tribunal on the basis of the evidence on record has concluded that the accident has taken place due to rash and negligent driving by the truck driver and the claimant has sustained injuries in the accident.

10. So far as the compensation is concerned, the Claims Tribunal awarded a sum of Rs. 40,000/- as compensation to the claimant along with pendente lite and future interest at the rate of 9% per annum. Out of the amount of Rs. 40,000/-, the National Insurance Company was directed to pay Rs. 25,000/- and Sri Charan Jeet Singh and Manjeet Singh were directed to pay jointly and severally Rs. 15,000/-.

11. Feeling aggrieved the National Insurance Company has filed the present appeal.

12. Counsel for the Appellant has challenged the award only on the point that as the driver of the truck has fake driving licence, therefore, the insurance company is not liable to pay compensation and the entire compensation is payable by the owner and driver of the truck.

13. Counsel for the Appellant has placed reliance on paper No. 61-Kha, which is a letter of Vigilant Detective Agency addressed to the Transport Authority, Amritsar. On that letter the District Transport Officer, Amritsar has made endorsement that licence No. 13896 in the name of Manjeet Singh has not been issued by him.

14. This document is not proved according to law and is not admissible in evidence. However, if it is accepted that the driver of the truck had no valid driving licence even then the insurance company is liable to satisfy the claim of the third party.

15. The Apex Court in the case of United India Insurance Company Ltd. v. Leheru and Ors. AIR 2003 SCW 1695 has held that if the driver's licence is found to be fake, the liability of the insurance company towards third party does not get

avoided. The insurance company on proof that owner of the vehicle was aware of the fact that licence was fake, can however recover the amount from the insured. The Apex Court has held as under:

18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia 2* and *Sohan Lal Passi 3* cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.

16. The Apex Court in the case *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, has held 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.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at the 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 u/s 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.

17. In the present case the Claims Tribunal has divided the liability of making payment of compensation on the owner and driver to the extent of Rs. 15,000/- whereas the insurance company has been directed to pay Rs. 25,000/- to the claimant.

18. In view of the case law of the Apex Court cited above, the insurance company Appellant is directed to pay the entire amount of the award to the claimant within a month. The matter is remitted back to the Claims Tribunal who shall decide the question whether the Insurance Company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle. An opportunity shall be afforded to the parties concerned for adducing evidence in that regard.

19. It is made clear that the claimants are exonerated from participating in the remaining part of the proceedings after remand of the case.

20. Accordingly the appeal is allowed.

21. No order as to costs.