
(2012) 10 DEL CK 0281
In the Delhi High Court
Case No : MAC. App. 369 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Shakuntala and Others

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 61, 62, 63

Citation : (2012) 10 DEL CK 0281

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Pradeep Gaur, with Mr. Amit Gaur, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—This Appeal is directed against a judgment dated 30.11.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 3,38,980/- in favour of Respondents No. 1 to 8, the Appellant Insurance Company was made liable to pay the compensation and its plea of exoneration or even grant of recovery rights was rejected. While admitting the Appeal on 06.03.2009, notice to Respondents No. 1 to 8 (the Claimants) was discharged and the Appeal was admitted qua Respondents No. 9 and 10, that is, the driver and owner of the offending vehicle.

2. It is urged by the learned counsel for the Appellant that from the verification report Ex. R3W1/B and from the copy of the statement of Sunil Ex. R3W1/C it was established that the offending vehicle, i.e. Jeep No. HR-24E-4624 was being run for hire or reward. Thus, it was established that there was breach of the terms and conditions of the policy on the part of the insured. The amount of compensation having already been paid to the Claimants, the Appellant Insurance Company is entitled to recovery rights.

3. It is no longer res integra that the initial onus is on the insurer to prove that there is breach of the terms and conditions of the policy.

4. In *Sohan Lal Passi Vs. P. Sesh Reddy and others*, ; the three Judge Bench decision of the Supreme Court while referring to Section 96 (2) (b) (ii) of the Motor Vehicles Act, 1939 held that this Section cannot be interpreted in a technical manner. Section 96 (2) (b) (ii) only enables the Insurance Company to defend the liability to pay the compensation on the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. It was held that if the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. The Supreme Court held that the insurer has to satisfy the Tribunal that such violation or infringement on the part of the insured was willful. The relevant part of the report is extracted hereunder:-

12.According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on

record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act.....

5. Similarly, in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , the Supreme Court observed that in order to avoid its liability it is not sufficient for insurer to show that the person driving at the time of the accident was not duly licensed but it must further be established that there was breach on the part of the insured.

6. Turning to the facts of the instant case, the Appellant was content to examine one Mr. Anand, Assistant in its Divisional Office, 22 Karol Bagh, New Delhi who tried to prove the report Ex. R3W1/B and the statement Ex. R3W1/C purported to be made by Sunil. The statement of Mr. Anand (R3W1) to prove the breach of terms and conditions of the policy, that is, the vehicle No. HR-24E-4624 was being run for hire and award was completely valueless.

7. The question of proof of a Sanction Order signed by the Sanctioning Authority i.e. Secretary (Medical) Delhi Administration came up before this Court in *State Vs. Brij Mohan*, where it was held as under:-

(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the

executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act).....

8. In the instant case not only that the investigator was not produced, the statement of Sunil son of Late Shri Fakir Chand (the deceased), could have been proved only by examining him as a witness or by producing any other direct evidence to prove that the vehicle was being run for hire and reward. The opinion of the investigator proved through the Assistant of the Appellant Insurance Company was not sufficient to prove that the vehicle was being run for hire and reward and consequently there was breach of the terms and conditions of the policy.

9. The Appeal, therefore, has to fail; the same is accordingly dismissed.

10. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.