(2006) 08 J&K CK 0002

In the Jammu And Kashmir High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Hardeep Singh RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 15

Citation : (2007) 1 JKJ 447

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nirmal Singh, J.—Respondent-Hardeep Singh (complainant) is the owner of Bus No.JK02-E-4285. He got his Bus insured with the New

India Assurance Co. Ltd. Divisional Office, Gandhi Nagar, Jammu, (hereinafter for short called the Insurance Company) for sum of Rs. 5,50,000/-

with effect from 17-04-1996 to 16-04-1997. The Bus met with an accident at Kalakot. District Rajouri on 06-01-1997 and the case to this effect

was registered with Police Station, Kalakot. Thereafter respondent-Hardeep Singh put up his claim with the Insurance Company. The Surveyor

assessed the damages. Petitioner-In-surance Company did not settle the claim of the respondent-Hardeep Singh on the plea that the Driving

Licence of the Driver of the offending Bus was not valid.

2. However, respondent-Hardeep Singh (complainant) filed a complaint before the learned Divisional Forum, Jammu, u/s 10 of the Jammu &

Kashmir Consumers Protection Act, 1987 (for short hereinafter called the Act). Therein the claimant prayed that he be paid Rs. 40,000/- as

loss/damages occurred to him with interest @ 25% and compensation of Rs.

8,000/- for suffering, pains, mental agony and cost of litigation.

3. The learned Divisional Forum Jammu, after recording the evidence awarded the claimant an amount of Rs. 31020/- as loss assessed by the

Surveyor with interest @ 12% per annum with effect from 28-04-1997, i.e., two months from the date of the report of the Surveyor. The

petitioner-Insurance Company was also directed to pay Rs. 1000/- as costs of litigation to the complainant.

4. Aggrieved of the aforesaid order, the Insurance Company filed an appeal bearing No. 2061 of 2000 before the Jammu & Kashmir State

Consumers Protection Commission, Jammu. The appeal was dismissed.

5. The petitioner-Insurance Company has challenged the order elated 14.03.2000 passed by the learned Divisional Forum, Jammu as well as the

order dated 04-01-2001 passed by the learned State Consumers Protection Commission, Jammu, in this writ petition.

6. Mr. R.K. Gupta learned Counsel appearing for petitioner-Insurance Company submitted that the Insurance Company is not liable to pay the

damages to the owner as the Driver of the ill-fated Bus was having a fake driving licence. He further submitted that Insurance Company is liable to

satisfy the claim of third party even if the Driver is holding a fake driving licence, but the Insurance Company can only satisfy the claim of the owner

if the Driver is holding a valid and effective licence as envisaged u/s 149(2) of the Act.

7. I have given my thoughtful consideration to the submissions of the learned Counsel for the petitioner-Insurance Company.

8. The only defence the petitioner-Insurance Company has taken in the petition is that the petitioner-Insurance Company is not liable to satisfy the

claim of the owner who has given/handed over the vehicle to a driver who was not holding a valid driving licence. When a owner of the vehicle

permits a person to drive the vehicle, the owner has to see whether the driver to whom the Vehicle is being handed over/given is having a valid,

driving licence or not and he is competent to drive the vehicle. He has not to make a full. Hedged enquiry about the validity of the driving licence as

has been laid down by a Division Bench of this Court in National Insurance Co. Ltd. Vs. Irfan Sidiq Bhat and Mohd Aslam Khan, . In the

aforesaid case it has been observed as under:

We are conscious of the fact, as pointed out by Mr. Kawoosa, that the decision in National Insurance Co. v. Swaran Singh was rendered in the

context of third party claim. In our opinion, the legal position would be no different in the case of own vehicle damage claim. While permitting a

person to drive the vehicle, the owner is not supposed to make a full-Hedged enquiry about the validity of the driving licence. If the driving licence

ex facie shows that the person is competent to drive a particular type of vehicle, the owner is not supposed to make enquiry from the concerned

licensing authority about its genuineness. The driving licence of Zahoor Ahmad, for example ex facie contained PSV endorsement which was fake,

We do not think it would be a reasonable proposition to expect of the owner to have the genuiness/validity of the licence or any endorsement

thereon verified from the licensing authority. In any view, onus is on the insurance company to prove that with positive knowledge of the

incompetence of the person or invalidity of his driving licence, the owner lowed him to drive the vehicle and thereby committed breach of the

condition of insurance police. In other words, it is for the insurer to prove that the insured was guilty of negligence. The insured had only to exercise

reasonable care in fulfilling the condi-tions of the policy of insurance regarding use of vehicle by a duly licensed driver. Simply on the ground that

the driving licence. did not contain PSV endorsement or that such endorsement was fake or that licence itself was fake, in itself would not be a

sufficient ground to repudiate the claim of the owner. Negativing the claim of the owner on such technical grounds would not be the interest of

justice.

9. In the instant case the driving licence was renewed by the RTO, Jammu. This fact was' not disputed by the petitioner-Insurance Company. In

this case the claimant has appeared before the learned Divisional Forum, Jammu as his own witness and deposed that he had checked the licence

of the driver which had been found renewed by the RTO. Jammu and he presumed that the driving licence of the Driver was genuine. The

petitioner-Insurance Company in its reply before the Divisional Forum, Jammu had not made any averments that the claimant was aware that the

driver was holding a fake driving licence. Therefore, the respondent-Hardeep Singh before engaging the driver had satisfied himself that he was holding a valid driving licence. Further more, the licence has been renewed by the RTO, Jammu.

10. The renewal of a licence is done u/s 15 of the Motor Vehicles Act, 1988 which reads as under:

15. Renewal of driving licences:-- (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of

this Act with effect from the date of its expiry: Provided that in any case where the application for the renewal of a licence is made more than thirty

days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has

attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in

Sub-section (4) of Section 8 shall, so far as may"" be, apply in relation to every such case as they apply in relation to a learner's

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by

the Central Government.

(3)...

(4)...

(5)...

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the

authority which issued the driving licence.

11. A perusal of sub scction-6 provides that if the authority renewing the driving licence is not the authority which issued the driving licence it shall

intimate the fact of renewing to the authority which issued the driving licence. The purpose of intimating the fact of renewal of driving licence to the

authority which had issued the same is that he should also come to know that the driving licence is renewed. If the driving licence is fake one and

has not been issued by the issuing authority which the applicant alleged to have got issued then the issuing authority will inform the renewing

authority that no such licence has been issued by the said authority and if the issuing authority is not intimated about this fact then the renewal authority will presume that the driving licence has been issued.

12. Therefore, the insurer had handed over/given the vehicle to a person who was having a valid driving licence and the said licence was renewed

by the authority where the driver ordinarily resides. Respondent-Hardeep Singh, thus, has rightly presumed that the RTO, Jammu who has

renewed the licence of the Driver must have intimated the fact of renewal to the licencing authority. Therefore, the insurer has not committed any

willful breach of the contract of the policy.

13. As such, the Insurance-Company is liable to pay the compensation/damages to the respondent-Hardeep Singh (complainant) as assessed by

the learned-Divisional Forum. Jammu. The Divisional Forum, Jammu has awarded interest @ 12% per annuam which is on the excessive side. The

reasonable rate of interest would be @ 9% per annuam instead of 12% per annuam. The decision of the learned Divisional Forum, Jammu is

modified to that extent.

With this modification in the interest, petition shall stand dismissed.

