
(2006) 04 AHC CK 0270
In the Allahabad High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Krishna Murari and Another

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149, 166, 168, 174
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2007) ACJ 791

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan and Dilip Gupta, JJ.—This first appeal from order has been filed against the award dated 17.1.2006 made by the Motor Accidents Claims Tribunal, Etawah (hereinafter called "the Tribunal").

2. Facts and circumstances giving rise to this case are that on 27.5.2000 at 7 a.m., one Longshree, while crossing the road to fetch water from a well, met an accident with truck No. URN 9516 which was being driven rashly and negligently and died on the spot. A criminal case was registered against the driver. His documents were seized and after holding the investigation, a charge-sheet was filed against the driver for rash and negligent driving u/s 279 read with Section 304A, Indian Penal Code. The husband of the said deceased, Krishna Murari had filed a claim petition, being the Claim Petition No. 377 of 2000 under Sections 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter called "the Act") impleading one Rajesh Kumar Jain as defendant No. 1 in the case, who was insured and the present appellant New India Assurance Co. Ltd. (hereinafter called "the insurer") as defendant No. 2. The present appellant insurer has taken large number of pleas in its defence including that at the time of accident, the vehicle was being driven by a person not holding a valid driving licence and the vehicle was not insured on the date of the accident. Large number of issues were framed including issues on the aforesaid two points/grounds taken by the

present appellant. The learned Tribunal after appreciating the evidence on record, recorded a finding that the onus to prove that the vehicle was driven by a person who was not having a valid licence was upon the present appellant and he failed to prove it. Another relevant issue regarding the insurance, the finding on that has been recorded that at the time of the accident, the vehicle was insured. After recording the findings on the aforesaid issues, a compensation of Rs. 2,13,000 was awarded by the Claims Tribunal for the loss/death of wife of the claimant observing that at the time of death, the age of deceased was only 22 years and her notional income was calculated at Rs. 1,500 per month, being a housewife, giving 17 multipliers.

3. Mr. Saral Srivastava, learned Counsel appearing for the appellant has raised only issue as to whether the vehicle was being driven by the person having a valid licence or not. The said issue has been decided by the learned Tribunal against the insurer.

4. We have considered the submissions made by learned Counsel for the appellant and have perused the record.

5. The onus to prove that the vehicle was being driven by the person having no valid licence lies upon the insurer. Vide *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC) ; *National Insurance Co. Ltd. Vs. Santro Devi and Others*, and *Punam Devi and Another Vs. Divisional Manager, New India Assurance Co. Ltd. and Others*, .

6. The issue involved herein is no more *res integra*, as it has been considered time and again by the Apex Court. Purpose of making insurance of a vehicle mandatory, i.e., a statutory requirement, is for the purpose that the claimants may get the compensation in time, otherwise in case the amount is to be recovered from the owners of the vehicle, the procedure would be more cumbersome. While considering the provisions of Section 96 of Motor Vehicles Act, 1939 (hereinafter called "the old Act") which was analogous to Section 149 of the Act, the Apex Court in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , held that the whole concept of getting the vehicle insured is to provide an easy mode of getting the compensation by the claimants, otherwise in normal course they have to pursue their claim against the owner from one forum to the other, and ultimately, to execute the order of the Motor Accidents Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well-known, therefore, the insurer and the insured are made jointly and severally liable to pay the compensation to the claimants and it is the duty of the insurer to satisfy judgments against persons insured in respect of third party risks and if the insurer satisfies that insured had violated the terms and conditions stipulated in the insurance policy, it would be entitled to make the recovery of that amount from the insured.

7. Keeping in mind the time in settling the claims in such matters the Hon''ble

Apex Court in *Bishan Devi v. Sirbaksh Singh* observed that there was a dire need to legislate for minimum and adequate relief to the claimants in vehicular accidental cases so that they may get something immediately which may mitigate their hardships to certain extent. The court observed as under:

(18) It is for the legislature to make provisions for immediate and adequate relief to the dependants in motor accident cases. The legislature may consider making the liability to pay minimum compensation absolute as is provided for to the dependants of victims in rail and air accidents. When a person dies in a motor accident, the number of his dependants and the period of their dependency may be ascertained. The minimum compensation may be paid every month to the dependants according to their share for the period to which they are entitled.

8. Section 140 of the Act provides for liability without fault in certain cases. As per the said provision, in case of death or permanent disability of any person as a result of the accident, the owner of the vehicle shall be liable to make payment of some amount on the principle of "no fault liability" and for such claim, it is not required for the claimant to plead and establish the death or permanent disability, in respect of which the claim had been made, was due to any wrongful act, neglect or default of the owner of the vehicle.

9. Section 2(10) of the Act, which defines "driving licence" reads as under:

"driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

10. Rule 141 of the Central Motor Vehicles Rules, 1989 (for short, "the Rules, 1989") mandatorily requires and authorises the insurer to issue every holder of policy of insurance, a certificate of insurance in Form 51 in respect of each such vehicle. Clause (9) of said Form 51 reads as under:

Persons or classes of persons entitled to drive:

State carriage/contract carriage/private service vehicle

xxx xxx xxx

Goods carriage

Any person, including insured:

Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:

Provided also that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.

11. Rule 3 of the Rules, 1989 provides in general, for non-application of the

provisions of Section 3 of the Act for a person receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive. Section 3 of the Act completely prohibits any person to drive a vehicle on any public place unless he holds an effective driving licence. In fact, it is a general clarification as Sub-section (2) of Section 3 of the Act also provides for a similar provision stating that condition, subject to which Sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle, shall be such as may be prescribed by the Central Government.

12. In *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, , the Hon''ble Apex Court held that in case at the time of accident the driver was not holding the effective driving licence, the insurer cannot be fastened with the liability and a driver holding learner''s licence cannot be regarded as a person having effective driving licence and in case the insurance policy makes it clear that in the event of an accident the insurer will be liable provided the vehicle was driven by a person holding valid driving licence or a permanent driving licence other than a learner licence, it cannot be fastened with any liability to indemnify the owner.

13. In *Kashiram Yadav v. Oriental Fire & Genl. Ins. Co. Ltd.* 1989 ACJ 1078 the Hon''ble Supreme Court held that when the insured himself entrusted the vehicle to a person who did not hold an effective licence, the insured could be said to have committed the breach of condition of policy and in case he is found guilty of committing such a breach, the insurer can escape from the obligation to indemnify the insured.

14. While dealing with a similar issue in *United India Insurance Co. Ltd. Vs. Gian Chand and others*, the Supreme Court held as under:

(12) Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the insurance company would get exonerated from its liability to meet the claims of third party who might have suffered on account of vehicular accident caused by such unlicensed driver....

15. While deciding the said case, the Hon''ble Supreme Court distinguished the facts from the case in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* wherein the vehicle had been entrusted by the insured to a person having effective driving licence. However, in transit, driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the ignition key at the ignition box. The cleaner meddled with the vehicle and caused the accident. The question arose : whether the insured (owner) had committed the breach of the conditions incorporated in the certificate of insurance since the cleaner operated the vehicle on the fatal occasion without having driving licence. The Hon''ble Supreme Court expressed the view that it was only when the insured himself entrusted the vehicle to a person who did not hold a valid licence, he could be said to have committed the breach of condition of the policy and in case the vehicle has been entrusted by somebody else, the insurance company cannot

escape from the obligation to indemnify insured for the reason that when insured had done everything within his power, inasmuch as he had engaged the licensed driver and had placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured was guilty of any breach.

16. The issue was re-considered at length by Hon"ble Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, wherein Hon"ble Apex Court examined the general terms of insurance policy and all statutory provisions of the Act and considered the earlier judgments given by the Hon"ble Supreme Court and came to the conclusion that if the vehicle has been allowed to be driven by a person having no valid licence, the insured is entitled to succeed in its defence and avoid liability. However, there may be a different matter where a disputed question of fact arises as to whether the driver had a valid licence or whether the owner of the vehicle had committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g., a case where an accident took place owing to a mechanical fault or vis major. The court further summarised the law and the relevant part thereof reads as under (para 102):

(iii) The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a 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 the 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.

Thus, it is evident from the aforesaid that the insurer can take a defence of violating the terms of insurance contract in case it is established that at the time of accident the driver was not having the valid licence.

17. A similar view has been reiterated by the Hon''ble Apex Court in *New India Assurance Co. Ltd. v. Manjit Kaur*. The Hon''ble Apex Court re-examined the issue again in *National Insurance Corporation Ltd. Vs. Mrs. Kanti Devi and Others*, wherein it followed the law laid down in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, and held that in case at the time of accident the driver is found to be without having a valid licence, the insurer cannot be fastened with the liability of compensation. However, the insurers be asked to pay the compensation but it shall be entitled to recover the same from the insured. While deciding the said case, the Supreme Court also re-considered its earlier judgment in *United India Insurance Company Ltd. Vs. Lehru and Others*,

18. The instant case is required to be examined in the light of the aforesaid settled legal proposition. It has come in the proceedings of the Tribunal that original documents including driving licence had been seized by the investigating agency after the accident, no attempt had been made by the appellant to summon the record from the competent criminal court to examine as to whether the driving licence of the person driving the vehicle at the time of accident was genuine or valid. The findings recorded by the Tribunal that the appellant failed to prove that the driver was not having a valid licence, does not require any interference, whatsoever as appellant failed to discharge the burden to establish the pleas taken by it.

19. In view of the above, appeal lacks merit and is accordingly dismissed.