(2012) 05 DEL CK 0620

In the Delhi High Court

Case No : Mac. App. 2 of 2005

New India Assurance Co. Ltd. — APPELLANT

Vs

Mithlesh and Others, Rakesh Sumal and Others, Gajender Singh and Others and Sumitra Devi and Others — RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 163A, 166

Citation : (2012) 05 DEL CK 0620

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Samrat Nigam, R-3, R-5, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha, J.—The appellant has challenged the awards of the Claims Tribunal on the limited ground that the appellant is entitled to the recovery rights against the owner of the offending vehicle. The accident dated 8th December, 1998 resulted in the death of Ramesh Singh and Sanjay Kumar and grievous injuries to Gajender Singh and Rakesh Sumal. All the aforesaid persons were travelling in Maruti Car No.DL-2CJ-1738 which was hit by truck No.DIG-9024. Four claim petitions were filed before the Claims Tribunal against driver, owner and Insurance Company of truck No.DIG-9024. The claim petition was defended by the appellant on the ground that the driving licence of the driver was fake.

2. The appellant examined its Assistant Officer, Ramanand as RW-1 who deposed that the driving licence of the driver was verified from the Investigator who found the same to be forged. The report of the Investigator was proved as Ex.RW1/F.

3. Ms. Harsh Kumari, owner of the offending vehicle appeared in the witness box as RW-2 and deposed that she employed Mujib-Ur-Rehman as driver of the offending vehicle. She deposed that at the time of seeking the employment, the

driver had shown the driving licence - Ex.RW-1/E to her and she had employed him after that.

4. The Claims Tribunal held that the appellant has to prove not only that the driving licence was fake but also that the owner of the offending vehicle was aware of the fact that the driving licence of the driver was fake. The Claims Tribunal held that the appellant has not led any evidence to prove that the owner of the offending vehicle was aware of the driving licence being fake and she entrusted the offending vehicle or permitted him to be a driver knowing the driving licence to be fake. The Claims Tribunal declined to grant the recovery rights to the appellant.

5. The law on the subject of fake driving licence is well settled by the judgment of three Judges Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, wherein the Court held as under:-

SUMMARY OF FINDINGS

106. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) ...

(ii) Insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Subsection (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.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defense''s)raised in the said proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(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 circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act.

(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 fulfill the requirements of law or not will have to be determined in each case.

6. The finding of the Claims Tribunal is squarely covered by the aforesaid judgment of the Supreme Court. There is no evidence to show that the insured was aware of the fact that the driving licence of the driver was fake. On the other hand, the owner has deposed on oath before the Claims Tribunal that she was not aware that the driving licence of the driver was fake. There is no merit in the aforesaid appeals which are hereby dismissed.