(2014) 05 GUJ CK 0003

In the Gujarat High Court

Case No : F.A. No. 834 of 2014

New India Assurance Co. Ltd. APPELLANT

Vs

Nafis Ahmed Abdul Razaq Ansari and Others RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Citation : (2015) 4 ACC 60 : (2015) ACJ 1955

Hon'ble Judges : M.R. Shah, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Vibhuti Nanavati, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Motor Accidents Claims Tribunal, Navsari (hereinafter referred to as ''the Tribunal'') dated 28.11.2013 passed in the Motor Accident Claim Petition No. 238 of 2009 by which the learned Tribunal has held the appellant insurance company also liable to pay the compensation for the death of Balwantbhai Rayabhai Patel, the appellant insurance company-original opponent No. 3 has preferred the present first appeal. At the outset, it is required to be noted that the appeal has been filed solely on the ground that as the driver of the vehicle involved in the accident was having a fake driving licence, the insurance company cannot be fastened with the liability to pay compensation. It is the case on behalf of the appellant that as the driving licence of the driver of the vehicle involved in the accident was fake, there was a violation of the terms of the insurance policy and, therefore, the insurance company is not liable to pay the compensation.

2. Mr. Vibhuti Nanavati, learned advocate appearing on behalf of the appellant insurance company, has vehemently submitted that as such the appellant insurance company has sufficiently discharged the burden to establish and prove

that the original opponent No. 1, driver of the vehicle involved in the accident, was having a fake driving licence. It is submitted that the appellant insurance company has examined the concerned R.T.O. Inspector at Exh. 65 in which the R.T.O. Inspector has specifically stated that the driving licence of opponent No. 1 has not been issued by the R.T.O., Moradabad, Uttar Pradesh and the same is in the name of some other person and, therefore, the same is found to be fake. It is therefore submitted that when the opponent No. 1 was holding a fake driving licence, there is violation of the condition of the insurance policy and, therefore, the insurance company cannot be held liable to pay the compensation. It is therefore submitted that the learned Tribunal has materially erred in holding the appellant insurance company liable to pay the compensation. Mr. Nanavati, learned advocate appearing on behalf of the appellant insurance company, has heavily relied upon the decision of the Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. v. Sujata Arora, 2013 ACJ 2129 (SC) . It is submitted that in the said decision the Hon''ble Supreme Court has observed and held that when the vehicle involved in the accident is driven by a person who did not have a valid licence, there is violation of conditions of the insurance policy and, therefore, the insurance company cannot be held liable to pay the compensation. He has also heavily relied upon the decisions of the Hon''ble Supreme Court in the case of Jawahar Singh Vs. Bala Jain and Others, , as well as in the case of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , the decisions which have been referred to and considered by the Hon''ble Supreme Court in the aforesaid decision of Sujata Arora (supra).

3. Making above submissions and relying upon the above decisions, it is requested to admit/allow the present appeal.

4. Heard Mr. Vibhuti Nanavati, learned advocate appearing on behalf of the appellant insurance company. We have perused the impugned judgment and award passed by the learned Tribunal and we have also appreciated/re-appreciated the entire evidence on record. The short question which is posed for the consideration of this court is as to whether in the facts and circumstances of the case the learned Tribunal has committed any error in holding the insurance company liable to pay the compensation?

5. It is the case on behalf of the appellant insurance company that as opponent No. 1, driver of the vehicle, was having a fake driving licence which has been proved from the evidence of the R.T.O. Inspector examined at Exh. 65, there is a violation of the conditions of the insurance policy and, therefore, the insurance company cannot be held liable to pay the compensation. However, it is required to be noted that in the present case neither the driver nor the owner of the vehicle involved in the accident has contested the claim petition. They have not stepped into the witness-box. It appears that even the appellant insurance company has not tried to examine original opponent Nos. 1 and 2 as witnesses. The R.T.O. Inspector who came to be examined at Exh. 65 has stated that from the record it can be said that the driving licence of opponent No. 1 has not been

issued by the R.T.O., Moradabad, Uttar Pradesh. However, whether on the aforesaid ground alone the insurance company can be absolved from its liability to pay the compensation? At the outset, it is required to be noted that the insurance company has not led any evidence and/or has not proved that opponent No. 2, owner of the vehicle involved in the accident, had knowledge that opponent No. 1 is having a fake driving licence and/or the owner of the vehicle driven by the driver failed to take reasonable care in employing a qualified and competent driver having valid licence. The insurance company has also failed to establish and prove that despite at the time of insurance of vehicle or thereafter, insurer required the owner to make such verification or the insurer draws owner''s attention that the driver''s licence was fake, the owner did not verify the genuineness of the licence from licensing authority. In light of the above, the question which is posed for consideration of this court as referred to hereinabove is required to be considered. As such identical question came to be considered by the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . In paras 85, 92 to 94, the Hon''ble Supreme Court has observed and held as under:

"(85) It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. In United India Insurance Company Ltd. Vs. Lehru and Others, , the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.

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(92) So far as the purported conflict in the judgments of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Lehru and Others, , is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

(93) The court, however, in Lehru''s case (supra) must not read that an owner of a vehicle under no circumstances has any duty to make any inquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

(94) The submission of Mr. Salve that in Lehru''s case (supra), this court has, for

all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

6. The decision of Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , came to be considered by the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and in the said judgment in para 11(iii), the Hon''ble Supreme Court has observed and held as under:

"11 (iii) ...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 duly licensed driver or one who was not disqualified to drive at the relevant time."

7. Even otherwise the issue/question raised in the present appeal is directly covered by the recent decision of the Hon''ble Supreme Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, . After considering the decisions of the Hon''ble Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , as well as National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , in para 8 , the Hon''ble Supreme Court has observed and held as under:

"(8) In a claim for compensation, it is certainly open to the insurer under section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh''s case (supra).

If despite such information with the owner that licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

8. Now, considering the aforesaid decisions of the Hon''ble Apex Court and the evidence on record, it cannot be said that the learned Tribunal has committed any error in holding the appellant insurance company liable to pay the compensation.

9. Now, so far as the decision of the Hon''ble Supreme Court in the case of Sujata Arora, 2013 ACJ 2129 (SC) , relied upon by Mr. Nanavati, learned advocate appearing on behalf of the appellant insurance company in support of his submission that the learned Tribunal has committed an error in holding the appellant insurance company liable to pay the compensation is concerned, at the outset, it is required to be noted that in the aforesaid decision, the decision of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , has not been drawn. Even the decision of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , which has been referred to by the Hon''ble Apex Court in the case of Sujata Arora (supra) has been considered by the Hon''ble Supreme Court in the subsequent decision of Pepsu Road Transport Corporation Vs. National Insurance Company, . It is required to be noted that even in the case of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , the Hon''ble Supreme Court has subsequently held that the decision in Swaran Singh''s case (supra) would be applicable to the cases of third party risk.

10. Now, applying the ratio laid down by the Hon''ble Supreme Court in the cases of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , as well as Pepsu Road Transport Corporation Vs. National Insurance Company, , in the present case as the appellant insurance company has failed to prove that opponent No. 2, owner of the vehicle involved in the accident, had any knowledge that opponent No. 1 was holding a fake driving licence and despite that he employed opponent No. 1, driver, and/or at the time of taking the insurance, the insurance company drew the attention of the owner that opponent No. 1, driver, was having a fake driving licence and despite the same the owner did not take proper care to verify the genuineness of the driving licence of opponent No. 1, driver, the insurance company cannot be absolved from the liability to pay the compensation as contended on behalf of the appellant insurance company. In the facts and circumstances of the case and considering the evidence on record, no error has been committed by the learned Tribunal in holding the insurance company liable to pay the compensation.

11. In view of the above and for the reasons recorded hereinabove, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. In view of dismissal of appeal, Civil Application No. 3241 of 2014 also deserves to be dismissed and is accordingly dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.

