
(2009) 02 GAU CK 0028
In the Gauhati High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Purna Hazarika and Others, etc.

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 15, 166, 9

Citation : AIR 2009 Guw 84 : (2010) 5 GLR 278 : (2009) 5 GLT 554

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Katakey, J.—These appeals by the insurance company are directed against the judgments and awards passed by the learned Member, MACT, Sibsagar in the motor accident cases registered on the basis of the applications filed by various claimants u/s 166 of the MV Act, 1988 (in short, the Act) for the death of the passengers in a motor accident occurred on 11 -11-1994 involving the motor vehicle bearing registration No. AS-06/7626(Bus) belonging to the respondent No. 3 Sri Ajit Chandra Hazarika, covered by a policy of insurance issued by the appellant insurance company. The case of the claimants in the claim applications is that on 11 -11 -1994 at about 7.30 a.m. while the deceased passengers were travelling in the said vehicle from Sivasagar to Dibrugarh It met with an accident as the bus fell into a roadside ditch and plunged into the water, as a result of which the passengers drowned and died. The claimants filed the claim applications claiming different amounts as-compensation under the provisions of the Act.

2. Upon receipt of the notices, written statements have been filed by the owner of the vehicle as well as by the insurance company. The owner of the vehicle in the written statement admitted the accident as well as the death of those passengers, in respect of whom claim petitions have been filed, however, contending that since the appellant insurance company has issued a policy of insurance, any compensation found to be awardable for the death of such

passengers is to be reimbursed by the appellant Insurance company. In the written statement filed by the appellant insurance company, it has been pleaded that (i) there is violation of the terms and conditions of the policy as the driver did not possess a valid driving licence, (ii) the bus was not plying in the permitted route and (iii) there was overloading of passengers exceeding the stipulated limit. The insurance company has not disputed either the accident or the death of those passengers in such accident and also the policy of insurance issued by it.

3. The claimants in support of their respective claim petitions examined witnesses and exhibited the relevant documents, who have been duly cross-examined by the insurance company. While the owner of the vehicle did not examine any witness; the insurance company has examined 4 witnesses namely Mrs. Rumena Begum, Bench Assistant in the Court of the SDJM, Sivasagar through whom the certified copy of the first information report filed in Demow PS and the certified copy of the seizure list as Exts. A and B have been proved; Sri Shambhu Prasad Patnaik, Branch Manager of the appellant insurance company at the Dibrugarh Branch, who proved the policy of insurance as Ext. C. Sri Satya Bhuson Sarkar, a private investigator appointed by the appellant insurance company to investigate the accident, who proved the photocopy of the driving licence as Ext. D and the reports of the DTO, Mon as Exts. E and F; and Sri Ghana Kanta Neog, prosecuting inspector in the Court of the learned CJM, Sivasagar, who proved the seizure list (Ext. B) and the Road Permit issued in respect of the said vehicle involved in the accident as Ex. H.

4. The learned Tribunal upon appreciation of the evidences on record has passed the awards awarding different amounts as compensation in respect of different MAC cases. Hence, the present appeals.

5. I have heard the learned Counsel for the appellants; learned Counsel for the respondent/owner of the vehicle; and also the learned Counsel appearing on behalf of the claimants in different appeals.

6. Learned Counsel for the appellant insurance company has advanced 3 fold arguments. Firstly, according to the learned Counsel, at the time of accident as the driver did not have any valid driving licence to drive the vehicle, the insurance company is not liable to reimburse the owner the compensation awarded by the learned Tribunal, since it amounts to violation of the policy condition. According to the learned Counsel, the driver must have a valid driving licence on the date of the accident under the policy condition and in the instant case, the validity of the driving licence expired on 6-2-1992 and the required fee for the renewal was paid only on 8-12-1994 i.e. much beyond the period of 30 days and, therefore, the renewal of such licence cannot be with effect from the date when the validity expired i.e. 6-12-1992, in view of the provisions contained in Sub-section (1) of Section 15 of the Act, though the District Transport Officer, Mon on 8-12-2004 renewed the said licence w.e.f. 6-2-1992. Learned Counsel therefore submits that the driver did not have a valid driving licence on the date

of accident, which has been renewed subsequent to the accident and that too in violation of the conditions stipulated in Section 15(1) of the Act and hence, the insurance company is not liable to reimburse the owner the compensation awarded by the learned Tribunal. Learned Counsel in support of their contention has placed reliance on the decisions of the Apex Court in National Insurance Co. Ltd. Vs. Kusum Rai and Others, , Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, , Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, and National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others,

7. The second limb of argument of the learned Counsel for the appellant insurance company is that the vehicle in question was not plying on the route permitted by the Permit issued by the competent authority and since there is a condition in the policy that the vehicle is to be plied in terms of the Permit issued by the competent authority, non-plying of the vehicle in the prescribed route as per the Permit amounts to violation of the policy condition and hence, the appellant insurance company is not liable. The third limb of argument of the appellant insurance company is that there being overloading of passengers by carrying more than the permissible limit under the Permit issued by the competent authority, the insurance company is not liable to pay the compensation as directed by the learned Tribunal, under the policy of insurance, there being violation of the conditions stipulated therein. According to learned Counsel, in any case the insurance company would be liable to pay the compensation only in respect of 50 passengers travelling in the bus, apart from the driver and one handyman as by the policy of insurance the insurance company has covered the risk of 50 passengers, one driver and one handyman. Learned Counsel in support of his contention has placed reliance on the decision of the Apex Court in National Insurance Co. Ltd. Vs. Anjana Shyam and Others, .

8. The contention of the owner of the vehicle involved in the accident is that u/s 149(2) of the Act though the insurance company can impose a condition in the policy excluding driving by a claimed person or persons or by any persons who are not duly licenced or by any person who has been disqualified for holding or obtaining driving licence during the period of disqualification and breach of such condition would absolve the insurance company from satisfying the award passed by the learned Tribunal, In the instant case, it is evident from the conditions stipulated in the policy of insurance, as proved by the appellant insurance company being Ext. C. that the insurance company has made itself liable even when the vehicle has been driven by a person who had held and has not been disqualified from holding an effective driving licence with all the required endorsements thereon as per the provisions of the Act and the Rules made thereunder for the time being in force to drive the category of motor vehicle insured and therefore even assuming that the driver did not have a valid driving licence on the date when the accident occurred, he having admittedly held a valid licence previously and there being no evidence on record that he has been disqualified from holding an effective driving licence, there is no violation of the

policy condition and as such, the insurance company is liable to satisfy the award passed by the learned Tribunal. It has further been submitted by the learned Counsel that the burden is on the insurance company to prove the violation of the policy condition to escape from the liability of satisfying the award passed by the learned Tribunal, which the insurance company has miserably failed to do. Learned Counsel further submits that the insurance company is also required to establish the wilful violation of the policy condition by the owner in allowing a person having no valid licence to drive the vehicle and also that the accident occurred because of the fault of the driver and because of the driving of the vehicle by a person who is not qualified to do so. According to learned Counsel, the insurance company has not been able to establish the same by adducing any evidence whatsoever. Referring to the provisions contained in Sub-section (4) of Section 15 of the Act, it has further been submitted by the learned Counsel that the authority has the power to renew a licence with effect from the date of its expiry even if such application is filed beyond 30 days, subject of course to the satisfaction of the authority that the applicant was prevented by sufficient cause in not applying within the time prescribed under Sub-section (3) thereof and in the instant case, the DTO on being satisfied that the applicant was prevented by, good and sufficient cause in not applying for renewal of licence within the time specified under Sub-section (3), has renewed the licence with effect from the date of its expiry i.e. 6-2-92, it cannot be said that the driver did not have a valid licence on the date of, the accident, being 11-11-1994.

9. Relating to the Submissions of the learned Counsel for the appellant that the vehicle on the fateful date did. not ply on the route permitted by the Permit issued by the competent authority, the learned Counsel for the owner has submitted that the insurance company though has taken such plea, has failed to substantiate the same by adducing any evidence, and the Permit, which has been exhibited as Ext. H at the instance of the insurance company does not exclude plying of the vehicle through Rajabari, where the accident occurred. Learned Counsel, refuting the submission relating to the overloading has further submitted that as because in the first information report (Ext. A) it has been mentioned that the vehicle carried 62 passengers, it does not automatically prove that the vehicle was overloaded, in the absence of any evidence adduced by the insurance company in that regard. Referring to the Road Permit, which has been proved by the insurance company as Ext. H, learned Counsel further submits that the Road Permit does not prohibit carrying a few passengers in excess of the sitting capacity of the bus. It has further been submitted that the policy, which has been proved by the insurance company as Ext. C does not contain any Clause that the insurance company shall not be liable in case the vehicle is overloaded. In any case, according to learned Counsel, keeping in view the fact that some teenagers between in the age group of 2-5 years were also travelling in the vehicle, carrying of passengers more than the permissible limit, even assuming such a limit is prescribed in the Permit, is a minor breach of terms and conditions of the policy which is not sufficient to eschew the liability of

the insurance company altogether. Learned Counsel further submits that there being no proof that compensation in respect of the death or bodily injury of more than 50 passengers has been claimed, the insurance company cannot escape the liability of satisfying the award, as admittedly the policy of insurance covers 50 passengers, apart from driver and handyman.

10. The contention of the learned Counsel for the claimants is that in fact the insurance company having accepted its liability under the policy has agreed to pay the awarded amount in respect of about 5 claim cases in the Lok Adalat and accordingly such amount of compensation has been paid. It has further been submitted that in case this Court finds that the insurance company is not liable to satisfy the award, keeping in view the entire facts and circumstances of the case, the insurance company may be directed to pay the remaining amount of compensation, allowing it to recover the same from the owner of the vehicle.

11. I have considered the submissions of the learned Counsel for the parties and also perused the materials available on record of MAC cases. Neither the insurance company has challenged the quantum of compensation awarded by the learned Tribunal in various MAC cases nor any appeal has been preferred by the owner of the vehicle against such quantum of compensation. The insurance company also has not challenged the factum of accident, travelling of persons in the bus on the fateful day in respect of whom the compensation has been claimed and awarded as well as the factum of issuance of the policy by it in respect of the vehicle in question. Hence, those aspects of the matter are not required to be gone into. The only contention of the insurance company is, as noticed above, that there being violation of the policy condition, in three respects, it is not liable to satisfy the award passed by the learned Tribunal.

12. Section 15 of the Act provides for renewal of driving licence. Sub-section (1) thereto provides that any licencing authority may, on application made to it, renew a driving licence issued under the provisions of the Act with effect from the date of its expiry. The first proviso to said Sub-section provides that in case such application for renewal of a licence is not made within 30 days after the date of its expiry, the same shall be renewed with effect from the date of its renewal. Sub-section (3) deals with the fee payable for such renewal in case application for renewal is filed previous to or not more than 30 days after the date of expiry. Sub-section (4) relates to fees payable for such renewal in case the application for renewal of the driving licence is made after more than 30 days of the date of its expiry. First proviso to the said sub-section, however, empowers the licencing authority to accept the fee for renewal as referred to in Sub-section (3) if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in Sub-section (3). The second proviso to Sub-section (4) provides that the licensing authority may refuse to renew the driving licence, if the application is filed more than 5 years after the driving licence ceased to be effective, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in Sub-section (3) of

Section 9.

13. Sub-section (1) of Section 15 of the Act, therefore, provides that the licence shall be renewed with effect from the date of expiry, only if the application for renewal is filed before the licencing authority previous to or not more than 30 days from the date of its expiry. Sub-sections (3) and (4) of Section 15 relates to the payment of fee to be paid, if such application is filed within 30 days from the date of expiry or after 30 days from the date of its expiry. Similarly, the second proviso to Sub-section (4) relate to the date when the renewal would be effective. It relates to the requirement of undergoing the required test in case such application for renewal is not made within 5 years from the date of expiry of the licence. Section 15 therefore makes it clear that unless the application for renewal for licence is made within 30 days from the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.

14. The Apex Court in Ram Babu Tiwari AIR 2008 SCW 6512 (supra) referring to its earlier decision, including the decision-in Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, has held that to get a licence renewed with effect from the date of its expiry, the application for renewal has to be filed within 30 days from the date of its expiry and in the event such application is not filed within the said period of time, the driver of the vehicle cannot said to be holding a valid licence and the insurer would not be liable to indemnify the insured.

15. The question, therefore, pertinent to be decided in the instant case, in view of the submissions of the learned Counsel for the parties, is whether the driver had a valid driving licence at the time of accident. Admittedly, the accident occurred on 11-11-1994. The driving licence (Ext. D) was initially valid up to 6-2-1992. It appears from the certificate (Ext. E) issued by the DTO, Mon as well as the endorsement of the DTO in the driving licence that the fee for renewal was paid on 8-12-1994 and thereafter the licence was renewed giving effect from its original date of expiry i.e. 6-2-2002 up to 6-2-1995. In the Certificate issued by the DTC, which has been exhibited as Ext. E, nothing has been mentioned about the date when the application for renewal for driving licence was Med. The insurance company though examined its Branch Manager as witness No. 2 and its investigator was witness No. 3, they have not stated anything from record so as to prove the date of filing of such application for renewal of the licence.

16. u/s 15(1), the date of filing of the application for renewal of the licence is crucial, as in the event such an application is filed within 30 days from the date of expiry of the licence, it automatically gets renewed with effect from the date of its expiry, otherwise from the date of its renewal. The insurance company having raised the plea that since the application has not been filed within 30 days from the date of the expiry of the validity of the licence, there cannot be any renewal of the licence with effect from the date of its expiry i.e. 6-2-1992, the burden lies on the insurance company to prove the date on which such application has been filed. As discussed above, no evidence has been laid by the

insurance company to demonstrate the date of filing of such application by the driver for renewal of its driving licence. On the other hand, it appears from the driving licence (Ext. D) and the certificate (Ext.E) issued by the DTO that though the fee for renewal was received on 8-12-1994, it, however, does not automatically lead to the conclusion that the application for renewal of the licence was filed on 8-12-1994, in the absence of any evidence in that regard. The licencing authority has renewed the licence with effect from 6-2-92, which leads to the presumption that the application for renewal of the licence was filed within 30 days from the date of its expiry, though the fee payable was realized much later. Such presumption under the law being rebuttable presumption, the burden lies on the insurance company to demonstrate otherwise, which, as discussed above, the insurance company has failed to do.

17. That apart, the insurance company also cannot be absolved from the liability to indemnify the insured, in, view of the policy condition in the policy (Ext. C) issued to the owner of the vehicle. Section 149(2) of the Act absolves the insurance company from its liability to indemnify the insured in case there has been a breach, -of specified condition of the policy. Clause (a) Sub-section (2) of Section 149 of the Act provides the conditions, the violation of which absolved the insurance company from the liability of indemnifying the insureds One of the conditions as stipulated in Sub-clause (ii) is that - a condition excluding driving by a named person to persons or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The insurance, company, therefore, to absolve itself from the liability of indemnifying the insured on the ground of violation of the policy condition, has to put such conditions as specified in Clause (a) of Sub-section (2) of Section 149, in the policy. The condition which has been put in the insurance policy (Ext. C) in the instant case reads as follows:

Any other person who is driving on the insured"s order or with his permission.

Provided that the person driving holds or had held & has not been disqualified from holding an effective driving licence with all the required endorsements thereon as per the Motor Vehicles Act, 1988 and the Rules made thereunder for the time being in force to drive the category of motor vehicles insured hereunder.

18. There is no dispute to the proposition of law that in case there is violation of the policy condition relating to the driving licence, which is a contract between the parties, the insurance company cannot be made liable to indemnify the insured as held by the Apex Court in National Insurance Co. Ltd. Vs. Kusum Rai and Others, as well as in National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, The conditions relating to driving of the vehicle by any other person other than the insured has been stipulated in the policy, which has already been reproduced above. From such condition it appears that in case of driving by two classes of persons, with the permission of the insured, namely (i) who holds a driving licence (ii) had held and has not been disqualified from holding an effective driving licence with all required endorsements under the law, the

insurance company is bound to indemnify the owner in respect of the liability arising out of a motor accident involving the vehicle concerned.

19. In the instant case, it is not the case of the insurance company that the driver of the vehicle was not permitted by the insured to drive the vehicle. It is also not the case of the insurance company that the said driver did not hold a valid driving licence previously. Even assuming that the application for renewal of the driving licence was filed beyond 30 days of the date of its expiry and hence It would be effective from the date of renewal i.e. 8-12-1994 and as such the driver did not have a valid driving licence on the date of accident, the driver having held a driving licence previously, driving of the vehicle by the driver does not amount to infringement of the condition in the policy, when there is no evidence on record that he has been disqualified from holding an effective driving licence with all the required endorsement thereon as per the provisions of the Act and the Rules framed thereunder. In fact the licence issued in his name has been renewed with effect from the date of its initial expiry i.e. on 6-2-1992.

20. The other contention of the appellant insurance company that since there was overloading of passengers, which also amounts to violation of the policy condition, the insurance company is not liable to be indemnify the insured, also cannot be accepted on the ground that the policy document which has been proved by the insurance company as Ext. C does not contain any Clause in that respect, except the condition that "use only for carriage of passengers in accordance with the permits (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act, 1988". The permit which has been exhibited as Ext. H though has stated that the sitting capacity is 52, it does not specify the maximum passengers to be carried in the bus under the said Permit. The insurance company has also failed to prove by adducing any evidence that the accident occurred because of the overloading of passengers. The contention of the insurance company that as the first information report (Ext. C) mentioned about the number of passengers carried, it has to be taken that the bus was overloaded by passengers, also cannot be accepted as the FIR cannot be treated as sacrosanct and no evidence has been laid by the insurance company in that regard, to prove the number of passengers carried in the vehicle though the police officer has been examined as witness. It is, however, true that the insurance company cannot be made liable for more than 50 passengers, since the insurance company has entered into a contract with the insured to indemnify him in respect of 50 passengers. But, in the instant cases, nothing has been placed on record to demonstrate that the claim cases claiming compensation in respect of more than 50 passengers have been filed so as to apply the ratio laid down by the Apex Court in National Insurance Co. Ltd. Vs. Anjana Shyam and Others, .

21. The further contention of the insurance company that the bus having not been plied in the route permitted under the Permit (Ext. H), the insurance company is not liable to indemnify the insured in view of the conditions in the

policy that the vehicle is to be used for carrying passengers in accordance with the permit only. The permit (Ext. H) prescribing the Rule for plying the vehicle is as under:

Duliajan ? Bordubi ? TSK ? Jugijan ? Dinjan ? Chabua ? Dibrugarh ? Moran ? Sepan ? Sumpara - Sibsagar - Jaysagar ? Namti ? Amguri ? illegible ? illegible - Jorhat and return.

22. The place of occurrence i.e. Rajabari is admittedly between Sivasagar and Moran. The bus was permitted to ply between Moran and Sivasagar and vice versa through Sapon. The insurance company though has contended that the bus was not plying in the permitted route, no amount of evidence has been laid by the insurance company to demonstrate before the learned tribunal that the bus cannot ply through Rajabari i.e. the place where the accident occurred. In the absence of any evidence to that effect, it cannot be held that the bus did not ply in the permitted route as contended by the appellant insurance company.

23. In view of the aforesaid discussions, I do not find any merit in the appeals, therefore, are dismissed. The insurance company is directed to deposit the awarded amount with interest as awarded by the learned Tribunal within a period of 45 (forty five) days from today before the learned Tribunal, less the amount already deposited. No costs.