
(2011) 05 DEL CK 0486
In the Delhi High Court
Case No : FAO 323 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

Ranbir Singh Shastri and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2012) ACJ 2510 : (2011) 4 TAC 129

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Salil Paul, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—By way of this appeal, the Appellant - Insurance Company seeks to assail the judgment and award of the Motor Accidents Claims Tribunal dated 15.05.2000 on the ground that it erred in fastening the liability of the award passed in the claim petition upon the Appellant-Insurance Company.

2. At the outset, it may be mentioned that though all the Respondents were duly served with the notice of the filing of the appeal, the appeal was not contested by any of the Respondents.

3. Mr. Salil Paul, the learned Counsel for the Insurance Company pointed out that in its amended written statement the Appellant had taken the plea that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and an additional issue, being Issue No. 4A, was framed as follows:

Whether Respondent No. 5 was not holding a valid driving licence at the time of the accident? If so, to what effect?

4. The learned Counsel further pointed out that in order to prove the fact that the Respondent No. 9 (the Respondent No. 5 in the Claim Petition) was not holding a valid driving licence at the time of the accident, the Appellant Company

had examined RW1 Jeevan Kumar, a Licencing Clerk from the Office of the Registering and Licencing Authority (Motor Vehicles), Una, H.P., who testified that driving licence (Ex.PB) belonging to Shri Amrik Singh, the driver of the offending vehicle, had not been issued by their Authority. He further testified that as per the record, for the period 01.04.1984 to 31.03.1985, only 292 driving licences had been issued by their Authority, as per the report prepared by Shri S.S. Chaniel (Ex.PW1/A), who was the Registering and Licencing Authority at the relevant time. In cross-examination, the witness admitted that the driving licence had been renewed twice, once in the year 1987 from Una and then in the year 1993 from Abohar, Punjab.

5. Mr. Salil Paul contended that the aforesaid evidence adduced by the Appellant was sufficient to bear out the contention of the Appellant that on the date of the accident, that is, on 15.10.1990, the insured vehicle was being driven by the Respondent No. 9 - driver Shri Amrik Singh with a fake and fabricated driving licence. The learned Claims Tribunal, therefore, erred in fastening the liability for the award amount upon the Insurance Company, more so, in view of the fact that it is settled law that renewal of a fake licence does not make the licence valid.

6. While this Court is conscious of the fact that renewal of a fake licence does not make a licence valid and it has been so held in a number of decisions of the Supreme Court, including the following:

- (i) New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.,
- (ii) National Insurance Co. Ltd. Vs. Laxmi Narain Dhut,
- (iii) National Insurance Co. Vs. Sajjan Kumar Aggarwalla,
- (iv) The Oriental Insurance Company Limited Vs. Meena Variyal and Others,

the fact that the licence of the driver of the offending vehicle was a fake one is of no avail to the Insurance Company in the instant case, for the reason that it is an equally well settled position of law that the Insurance Company in order to succeed in its defence must conclusively establish on record that the insured had "wilfully" committed breach of the conditions of the insurance policy by permitting his vehicle to be driven by a person not holding a valid and effective driving licence. This is the law laid down by a three-Judge Bench decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein it is observed as under:

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

- (i) ...
- (ii) ...
- (iii) The breach of policy condition, 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.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(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.

7. In *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, the Supreme Court had also pointedly observed:

...The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led....

8. Thus, it is clear that for the purpose of proving wilful breach of the policy conditions by the insured, the insurer must lead evidence to prove its allegation of willful breach. If the insurer is able to establish that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver, the defence of the insurer must succeed. If, on the other hand, the insured is able to show that he exercised reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle by a duly licenced driver, the defence of the insurer must necessarily fail

9. In the present case, there is admittedly no evidence on record to show that the insured was aware of the fact that the driving licence of his driver was a fake one. The inevitable conclusion therefore is that the Insurance Company has failed to establish that the insured was guilty of willful breach of the policy condition with regard to the driving licence of his driver. There is, therefore, no merit in the present appeal. The appeal is accordingly dismissed. There will be no order as to costs.