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In the Delhi High Court

Case No : FAO No. 870 of 2003

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Geeta and Others RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 10(2), 149(2), 2(21), 2(27)

Citation : (2009) 1 ILR Delhi 522

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Neha Gupta, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellant seeks to challenge the award dated 23.10.2003, whereby the appellant has been made liable to pay and satisfy the award along with the insurer of the other offending vehicle i.e., New India Assurance Co. Ltd.

2. Brief facts to deal with the contentions raised by the parties are as under:

On 26.09.1995 at about 8:30 pm, the deceased Sh. Satish Kumar, driver of an auto rickshaw, was coming from Najafgarh. When he reached Arjun Park near the State Bank of India, Nangli Sakrawaton on main Najafgarh Road, he got down from the auto rickshaw to purchase bidi and when he was coming back to the said auto rickshaw, all of a sudden, Sh. Raj Sharma, who was the owner of the said auto rickshaw and employer of Sh. Satish, started the rickshaw with a sudden jerk, as a result the rickshaw turned turtle and Sh. Satish came under it. Due to the accident, Sh. Satish received fatal injuries and was taken to DDU hospital, where he was declared as ''brought dead''.

3. I have heard learned Counsel for the parties and perused the record.

4. Mr. Pankaj Seth, counsel for the appellant contended that as per the evidence

on record, it was sufficiently proved that the vehicle which was insured with the appellant insurance company was driven by the driver respondent No. 5 herein, who was not having a valid driving licence at the time of the accident. In support of his argument counsel for the appellant invited my attention to the deposition of Shri Ram Sharma, who in his cross-examination categorically stated that at the time of the accident he was having a driving licence to drive a two- wheeler scooter while the vehicle involved in the accident was a three wheeler scooter falling in the category of LMV as defined u/s 2(21) of the Motor Vehicles Act, 1988. Counsel for the appellant urged that the driver of the vehicle was also the owner of the vehicle and it was in his knowledge that the licence held by him authorizes him to drive only a two-wheeler scooter and that he could not drive an auto rickshaw in the absence of an endorsement on his driving licence authorizing him to drive the LMV (TV) as required u/s 10(2) of the MV Act. Counsel thus contended that there is clear violation of the insurance policy and therefore, the appellant cannot be made liable to pay any amount towards the compensation. The counsel submitted that even if the appellant is made liable to satisfy the award at the first instance, then, at least the appellant is entitled to recovery rights against the owner insured. In support of his arguments counsel for the appellant has placed reliance on the following judgments:

a. M. Balasubramanya Vs. Pradyumna and Others, ;

b. National Insurance Co. Ltd. Vs. Ojili Gopal Reddy and Others, ;

c. Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, ; and

d. National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

5. Per contra Ms. Neha Gupta, counsel for respondents 1 to 4 and Mr. K.P.S. Chauhan counsel for respondent No. 5 vehemently refuted the said contentions of counsel for the appellant and submitted that the award passed by the tribunal is just, fair and reasonable and requires no interference.

6. Section 2(21) of the Motor Vehicles Act defines ''light motor vehicle'', Section 2(27) refers to ''motor cycle'', while Section 10(2) refers to ''Form and contents of licences to drive?. The said provisions are reproduced as under: Section 2(21) ''Light motor vehicle'' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed (7,500 Kilograms) Section 2(27) ``motor cycle''` means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle; Section 10(2) A learner''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) motor cycle without gear;

(b) motor cycle with gear;

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(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

7. The careful reading of Section 2(21) discloses two points viz.,:

(a) The Light Motor Vehicle means, A transport vehicle or ominibus, the gross weight of either of which does not exceed 7500 Kgs.

(b) A motor-car or tractor or road-roller, the unladen weight of any of which does not exceed 7500 kilograms. Meaning thereby, the unladen weight of less than 7500 Kgs shall be taken into consideration only in respect of the motor-car or tractor or road-roller to assess as to whether the said vehicle is ''LMV'' or not. But insofar as the transport vehicle or omnibus is concerned, the gross weight of said vehicle shall be taken into consideration to determine the nature of the vehicle. If the gross weight of such vehicle is less than 7500 Kgs, then the vehicle can be termed as ''LMV.

8. It is also relevant to note the summary of findings, which are relevant for this case, arrived at by the Apex Court in the case of Swaran Singh, cited as under, which reads thus:

(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 inspired 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 wherefore would be on them.

(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

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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.

9. Looking to the aforesaid principles laid down by the Apex Court, it is clear that in each case, on appreciation of the evidence led before the Tribunal, the decision has to be taken to find out as to whether the fact that the driver possessing licence to drive one type of vehicle but found driving another type of vehicle was the main or fundamental or contributory cause of the accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. It is also clear from the aforesaid judgment that the burden is on the Insurance Company to prove that there was willful breach on the part of the insured in permitting the driver holding a licence to drive a particular type of vehicle but was driving another type of vehicle for which he was not licensed and that has to be proved by the Insurance Company. In the instant case the owner of the offending vehicle himself admitted that he was holding a licence to drive a two wheeler and it is an admitted fact that he was found driving a three wheeler, thus, the Insurance Company has proved that there was clear breach of policy.

10. As regards the contention raised by counsel for the appellant that at least the appellant is entitled to recovery rights, I find the same has some merit. The Motor Vehicles Act, 1988 provides for different qualifications and separate licenses to drive different types of vehicles. The LMV is one such category. The LMV transport could be either LMV goods vehicle or LMV passenger vehicle. Let us take Ambassador Car as an example, the skill of driving an ambassador car, whether it is LMV non-transport or transport would make very little difference in law insofar as pedestrians are concerned. May be for the safety of inmates while granting licence to drive LMV passenger transport the driver may have to qualify some tests. But as far as third parties are concerned the skills of driving remains same. In that view, to make a distinction between the ambassador car (LMV non-transport) and ambassador car (LMV transport) is a flawed logic. But the case is different when it comes to an LMV and a motorcycle or a two- wheeler. A two-wheeler license is issued by the Regional Transport Authority (RTO) to permit driving of only two-wheeler vehicles like bike, scooter and moped. Whereas, a Light Motor Vehicle License is issued to drive light vehicles like auto rickshaws, motor car, jeep, taxi, three-wheeler, delivery vans, etc.

11. The Apex Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, has held that breach on the part of the owner should be so fundamental so as to entitle the insurance company to claim complete exoneration from its liability to pay the insurance amount. I find violation on the part of the driver of the offending vehicle, fundamental in nature.

12. As is clear from the above discussion, the instant case is on a different

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footing as it is not a case herein that the owner driver was in possession of a licence to drive an LMV of a particular category and not of any other category. In the instant case the driver was holding a two-wheeler driving licence, which requires completely different skills, but was found driving a three-wheeler scooter, which falls in the category of LMV. When the driver of the said offending vehicle had clear knowledge that he did not have a driving licence to drive the auto rickshaw and was holding a driving licence only to drive a two wheeler, then surely the driver owner of the offending vehicle willfully breached the insurance policy and thus, the insurer cannot be fastened with the liability to satisfy the award, when there is clear breach of policy.

13. In view of the foregoing discussion and also considering that in the instant case the owner driver of the offending vehicle himself admitted in his cross examination that he was holding a driving licence for a two wheeler, I feel that there is ample material to exonerate the insurance company and the tribunal erred in burdening the insurance company in satisfying the award.

14. In this backdrop, directions are given to the appellant insurance company to satisfy the award at the first instance and then recover the awarded amount from the insured.

15. With these directions, the appeal is allowed.

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