(2007) 10 DEL CK 0169

In the Delhi High Court

Case No : MAC App. No. 356 of 2006

New India Assurance Co. Ltd. — APPELLANT

Vs

Smt. Pushpa Devi and Others — RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1939 — Section 96(2)
Motor Vehicles Act, 1988 — Section 149(1), 149(2), 149(3), 149(7)

Citation : (2007) 10 DEL CK 0169

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant; Rajiv Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—In the present appeal limited relief for grant of recovery rights to recover the award amount from the insured/owner of the offending vehicle has been claimed. The contention of the counsel for the appellant is that the appellant had duly proved the DL verification report i.e., Ex.R3W1/3 which clearly states that the driver of the offending vehicle was authorized to drive LMV w.e.f. 11.7.2000 but later on w.e.f. 16.5.2001 he became eligible to drive HMV. The accident in question had occurred on 20.1.2001 and therefore on the date of the said accident the driver of the offending vehicle was not authorised to drive HMV and it is not in dispute that the driver of the offending vehicle was driving a truck bearing registration No. HR-37-A-1571. Counsel for the appellant further contends that the appellant had served a notice as envisaged under Order 12 Rule 8 of the CPC upon the owner of the offending vehicle. Carbon copy of the same was exhibited as Ex.R3W1/4. However, despite service of notice under Order 12 Rule 8 the owner and driver of the offending vehicle failed to produce the documents as detailed in the said notice sent by the appellant. Counsel for the appellant, thus, contends that adverse inference should have been drawn against the owner and driver of the offending vehicle on account of non production of the original driving licence and other documents as sought in the said notice under Order 12 Rule 8. Counsel for the appellant contends that the owner of the vehicle also did not prefer to contest the case and preferred to remain ex-parte during the proceedings before the Tribunal. Counsel for the appellant further contends that even the said witness R3W1 according to whose deposition the notice was served under Order 12 Rule 8 CPC and the legal verification report were exhibited was not cross-examined by the owner and driver of the vehicle. Counsel for the appellant has also placed reliance on the order of this Court passed in MAC. APP. No. 261/2006, dated 28.3.2007, where in similar circumstances this Court has granted recovery rights to the insurer to recover the award amount from the owner or driver of the offending vehicle.

2. Per contra, counsel for the respondent contends that there is no illegality or perversity in the award passed by the Tribunal. He further contends that the Tribunal has placed reliance on the judgment of the Supreme Court in United India Insurance Company Ltd. v. Lehru and Ors. I (2003) ACC 611 (SC), wherein it has been clearly held that the owner of the offending vehicle is not expected to find out as to whether the licence issued in favour of the driver was a genuine or fake one or was it issued by the competent authority or not.

3. I have heard counsel for the parties at considerable length.

4. Here is a case where a verification report issued by the Licencing Authority, Koderma, Jharkhand has been duly certified that the licence in question issued in favour of Mr. Tekka Ram was initially for driving LMV w.e.f. 16.7.2000 and it is only w.e.f. 16.5.2001, the same was changed to HMV. The driver Tekka Ram, therefore, became eligible and authorised to drive the HMV only w.e.f. 16.5.2001 and not prior thereto. The accident in question involving the said offending vehicle had occurred on 20.1.2001 and admittedly on that date the driver was authorised to drive LMV and not HMV. It is, thus clear breach of Section 149(2) of the Motor Vehicles Act and therefore, the insurance company gets the right to recover the award amount from the insured/owner of the offending vehicle. This is so also because the insured/owner of the offending vehicle failed to contest the compensation case filed by the claimants. The owner also failed to give any response to the notice served upon him under Order 12 Rule 8 of the CPC. The respondent/owner of the offending vehicle also failed to cross-examine the said witness R3W1, adduced by the appellant who had proved the said verification of driving licence as well as copy of the notice served upon the owner of the offending vehicle under Order 12 Rule 8 CPC. In the similar circumstances, this Court in an appeal bearing MAC. APP. No. 261/2006 has held that adverse inference has to be drawn against the insured who despite notice under Order 12 Rule 8 CPC failed to produce the original licence. The appellant has already paid the entire award amount along with interest to the claimants. The only relief as claimed by the appellant is for recovery of the award amount from the respondent No. 2/owner of the offending vehicle. The Supreme Court in National Insurance Co. Ltd. v. Nicolletta Rohtagi while elaborating the scope of Section

149(2) of the Act has observed as under:

13. To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of a motor vehicle accident. u/s 96(2) of the 1939 Act which corresponds to Section 149(2) of the 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of the deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises, what are the defences available to it under the statute? The language employed in enacting Sub-section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, Sub-section (2) of Section 149 of the 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in Sub-section (2) of Section 149 of the 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

14 . Sub-section (7) of Section 149 of the 1988 Act clearly indicates in what manner Sub-section (2) of Section 149 has to be interpreted. Sub-section (7) of Section 149 provides that no insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in Sub-section (1) or in such judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The expression ''manner'' employed in Sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in Sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in Sub-section (2) of Section 149 of the 1988 Act. We are, therefore, of the view that an insurer cannot avoid its liability on any other grounds except those mentioned in Sub-section (2) of Section 149 of the 1988 Act.

11. As was observed in the said case the statutory defences which are available to the insurer to contest the claim are confined to those provided in Sub-section (2) of Section 149.

5. In view of the above discussion, I dispose of the appeal granting recovery rights to the appellant to recover the award amount as already paid by the appellant to the beneficiaries of the claim petition from respondent/owner of the

offending vehicle.

6. With these directions, appeal stands disposed of.

7. Lower court record be returned.