(2005) 09 SHI CK 0010

In the High Court Of Himachal Pradesh

New India Assurance Company APPELLANT

Vs

Smt. Kanku and Others RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 3 ACC 340

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—The only question raised in these four appeals is whether the Insurance Company is not liable to pay the compensation on account of the alleged breach of condition regarding the person entitled to drive the vehicle.

2. Facts, relevant for the disposal of the appeals, may be noticed. Accident of truck No. HIS-5255 took place on 1.3.1993 in which three persons died and one person sustained injuries. The dependents of the three deceased persons and the injured filed separate petitions, u/s 166 of the Motor Vehicles Act, seeking award of compensation. The Motor Accident Claims Tribunal consolidated all the four petitions and decided the same vide award dated 15.3.1995. The appellant, with whom the truck, in question, was insured, had taken the plea that respondent Liaquat Ali, who was alleged to have been driving the truck at the relevant time, did not possess a valid and effective driving licence. The Tribunal rejected the said plea and ordered the insurer to pay the compensation.

3. Four separate appeals were preferred, one in respect of each petition, by the appellant, assailing the finding of the Tribunal that there was no breach of condition as to the person entitled to drive the vehicle and hence the insurer was liable. Three of those appeals, together with cross objections filed therein, were decided by this Court vide judgment dated 25.8.1999. Appeals were filed against the said judgment in the Hon''ble Supreme Court and the Hon''ble Supreme Court, vide judgment dated 27.3.2001, remitted those three matters to the Accident Claims Tribunal for deciding the question whether the Insurance

Company was entitled to recover the amount, paid by it to the claimants, from the owner of the vehicle on account of the vehicle being driven by the person, who had no valid licence to drive the vehicle.

4. The Tribunal, vide award dated 29.4.2002, has returned the findings that in the first instance the appellant has not proved that the licence of respondent Liaquat Ali was fake and secondly even if it be assumed that the licence was fake, there was no evidence on record suggesting that the owner of the truck/ insured knew or had reason to know that the licence was fake and, hence, he could not be said to have caused the breach of the condition of the policy that only a person possessing a valid licence was entitled to drive the vehicle.

5. Three appeals, i.e., FAO Nos. 346, 345 and 349 of 2002 have been directed against the aforesaid award dated 29.4.2002 of the Accident Claims Tribunal. The fourth appeal i.e., FAO No. 259 of 1996, is against the original award dated 15.3.1995, as it was not disposed of alongwith the three other appeals (which were disposed of by ajudgment dated 25.8.1999) and remained pending.

6. While addressing the arguments, the Counsel for the appellant-insurer confined the arguments even in respect of the aforesaid fourth appeal, to the aforesaid question only.

7. I have heard the learned Counsel for the parties and perused the evidence.

8. Copy of the driving licence was produced by the owner of the vehicle, namely respondent Krishan Singh (RW-3). The licence, copy mark-X, appears to be issued by Licensing Authority Paonta Sahib. Its number is 1874-P-90. The Insurance Company, after remand of the case by the Hon''ble Supreme Court, examined one Gaurav Pathak (R-3/W-1) from the office of the registering and Licensing Authority, Paonta Sahib. The witness testified that Licence No. 1874-P-90, copy mark-X, had not been issued from the office of the Licensing Authority, Paonta Sahib, inasmuch as there was no entry of this licence in the relevant register, which he had brought with him at the time of making deposition. There does not appear to be any reason to disbelieve the testimony of the witness, particularly when Liaquat Ali has not stepped into the witness box to controvert this evidence nor has the owner led any evidence to show that the licence is genuine and that is what R-3/W-1 Gaurav Pathak has stated, on the basis of the record maintained by the Licensing Authority, Paonta Sahib, is incorrect. Consequently it is held that the licence of respondent Liaquat Ali was a fake one.

9. The next question is whether the insurer would stand absolved of its liability to indemnify the insured by the mere proof of the fact that the licence was a fake one or is it required to establish something more. The plea of the insurer is that the policy of the insurance contains a condition that the vehicle was to be driven by a duly licensed person and that since there is breach of this condition it (the appellant) is not liable to pay the compensation.

10. It is by now well settled that an insurer cannot escape its liability or payment of compensation by mere proof of the fact that the licence is not genuine and it (the insurer) is further required to prove that the insured knew or had reason to know or could have known by exercise of care and vigil of a person of ordinary prudence that the licence was fake, Reference in this behalf may be made to National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein, vide para 102(iii), the following finding has been given:

(iii) The breach of policy conditions, 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 fulfiling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time.

11. In the present case, the owner of the vehicle, namely insured Krishan, appeared as RW-3 and testified in no uncertain term that at the time of the employment of the driver, namely respondent Liaquat Ali, he had seen his licence. On a bare look at the licence, copy mark-X, it cannot be said that the same is forged. In fact, the licence is renewed by the Registering and Licensing Authority, Rohru and this endorsement of renewal is proved to be genuine by RW-1 Partap Singh, a Clerk from the office of the Registering and Licensing Authority, Rohru. This suggestion that the fakeness of the licence could not be detected even by the Licensing Authority at the time of its renewal. That means apparently the licence appeared to be genuine. Under these circumstances, it cannot be said that the insured, viz. respondent Krishan Singh, owner of the vehicle, was negligent or did not exercise reasonable care to satisfy himself, while employing respondent Liaquat Ali, that he possessed a valid driving licence. Therefore, he cannot be said to be guilty of the breach of the condition of the policy as regards the person entitled to drive the vehicle. If that is so, the appellant cannot escape its liability for indemnification of the insured or in other words, to pay the compensation awarded by the Tribunal.

12. As an upshot of the aforesaid discussion, all the four appeals are dismissed.

