(2003) 07 AHC CK 0169

In the Allahabad High Court

New India Assurance Company Ltd. — APPELLANT

Vs

Ahmed Hussain and Another — RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(iii)
Workmens Compensation Act, 1923 — Section 30

Citation : (2003) 3 ACC 665 : (2003) 6 AWC 4836

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the insurer-appellant.

2. The appellant has filed the present appeal u/s 30 of the Workmen''s Compensation Act feeling aggrieved by the award of Workmen''s Compensation Commissioner determining an amount of Rs. 2,13,060/- as compensation to which the dependants of the deceased Shah Nabi @ Guddu were found entitled to on account of his untimely death in an accident involving the motor vehicle, arising out of and in the course of his employment as the cleaner of the offending motor vehicle - a truck bearing registration No. U.P.-25-G-8123. The offending motor vehicle had been insured by the present appellant covering the risk.

3. Learned Counsel for the appellant has strenuously urged that even on the finding returned by the Commissioner, it is apparent that at the time of the accident the offending motor vehicle was being driven by the cleaner - Shah Nabi @ Guddu and m this view of the matter since there was no evidence to show that the cleaner had any valid licence authorising him to drive the offending motor vehicle, it was not open to the Commissioner to fasten any liability on the insurer-appellant in respect of the amount of compensation awarded. What has been urged is that in the facts and circumstances there was a clear breach of the terms and conditions subject to which the insurance policy had been issued covering the risk as one of the terms and conditions subject to which the policy

had been issued required that the motor vehicle was not allowed to be driven by a person who was not having a valid licence for the purpose.

4. It may be noticed that in its decision in the case of United India Insurance Co. v. Lehru and Ors. reported in I (2003) ACC 661 : 2003 (51) ALR 405 (SC) the Apex Court has clearly observed that where the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(iii) of the Motor Vehicles Act. Further it was indicated that the Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

5. It was further observed that in a case where without the knowledge of the insured, if by driver''s act or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance.

6. In the present case what we find is that while it has been found established that the deceased Shah Nabi @ Guddu had been employed as a cleaner of the offending truck, there was no wilful disobedience on the part of the cleaner of any order specifically given to him which could if at all exonerate the employer from any liability and consequently exonerate the insurer to indemnify and pay the amount of compensation. In case there was a breach of the terms and conditions subject to which the policy had been issued, the insurer could recover the entire amount from the employer/insured all the excess amount paid to the deceased.

7. The findings returned by the Workmen''s Compensation Commissioner which are based on the appraisal of evidence on record could not be demonstrated to be suffering from any such legal infirmity which may justify an interference therein while exercising the limited jurisdiction envisaged u/s 30 of the Workmen''s Compensation Act.

No substantial question of law arises in this appeal.

This appeal is, accordingly, dismissed.

8. The dismissal of this appeal will, however, not prevent the insurer from initiating appropriate proceedings in accordance with law for the recovery of the entire amount paid to the dependants of the deceased workman pursuant to the impugned award from the employer after establishing the breach of the terms and conditions subject to which the policy had been issued in which proceeding the employer will have full opportunity to contest the claim of the insurer.

