(2012) 04 DEL CK 0360

In the Delhi High Court

Case No : MAC. App. 717 of 2010

New India Assurance Company Ltd. APPELLANT

Vs

Harjit Singh and Others RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)

Citation : (2012) 04 DEL CK 0360

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Neerja Sachdeva in MAC. app. 717/2010 and Mr. Sameer Kumar in MAC. app. 114/2011, for the Appellant; Manish Mannie, Advocate for R-1, Mr. Sameer Kumar, Advocate R-2 and R-3 in MAC. App. 717/2010 and Ms. Neerja Sachdeva, Advocate for R-2 in MAC. App. 114/2011, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These two Appeals arise out of a common judgment dated 27.07.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 6,21,000/-, the Claims Tribunal granted recovery rights to the Insurer (the New India Assurance Company Limited) against the Respondents No. 2 and 3 (the driver and owner of the offending vehicle). MAC APP. 717/2010 has been filed by the New India Assurance Company Limited on the ground that the driving licence of the driver Vipin Kumar was not valid on the date of the accident(It being already expired). He was, therefore, without a licence for all practical purposes. The Insurance Company urges the counsel was entitled to be completely absolved of the liability.

2. MAC APP. 114/2011 has been filed by Vipin Kumar and Manoj Kumar (the driver and owner of the offending vehicle) on the ground that mere absence or invalidity of the driving licence was not sufficient to absolve the Insurance Company for its liability to indemnify the Insured. The Insurer was under obligation to prove that there was a willful breach of the terms of policy. It is

averred that the driver had obtained a Certificate of Two Days Refresher Training Course Ex. CW-1/A (proved by way of additional evidence during these proceedings) which was valid for a period of three months w.e.f. 12.06.2007 and thus, the driver shall be deemed to have possessed a valid driving licence on the date of the accident which occurred on 22.08.2007.

3. CW-1 M.K. Aggarwal, Joint Secretary, Automobile Association of Upper India proved certificate issued by the Association as Ex. CW-1/A. He clarified that on the basis of the Certificate, the Applicant could apply for issuance of a driving licence for HMV within a period of three months from the date of issuance of the certificate. He stated that the Refresher Course was mandatory for renewal of a driving licence for HMV. The Certificate Ex. CW-1/A was not a substitute for the driving licence.

4. The driving licence issued to the driver Vipin Kumar was valid for a period of 01.06.2004 to 31.05.2007 and then for the period of 25.08.2007 to 24.08.2010. It is established that the licence was not renewed within a period of 30 days from the date of its expiry and it will not relate back to the initial date of issuance of the driving licence.

5. The issue is no longer res integra that even in a case where the insurance company establishes a conscious breach of the terms of the insurance policy, the liability of the insurer to satisfy the decree vis-a-vis third party is statutory.

6. There is an authoritative pronouncement of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, are extracted hereunder :-

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

x x x

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

7. Following Swaran Singh, (Supra) this Court in National Insurance Company Limited v. Sanjay Kumar, ILR 2007 Del 733 held that even when breach of the terms and conditions of policy of insurance in terms of Section 149(2)(a) of the Motor Vehicle Act, 1988 is proved, the insurance company would still be required to pay the sum awarded to the claimant, but would be entitled to the recovery rights against the insured.

8. In MAC APP 329/2010, Oriental Insurance Company Limited Vs. Rakesh Kumar and Others, decided on 3rd February, 2012, this Court noticed National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and

others, , New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Lehru and Others, and held that even when there is a willful breach of the terms of policy u/s 149(2)(a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third party and recover the same from the owner.

9. It was established on record that the Appellant''s driving licence was not valid on the date of the accident. The certificate issued by the AAUI which was valid for three months, as stated by RW1 was not a substitute for licence. The case of expired licence is covered by the Supreme Court report in New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal, where, driving licence of the driver had expired on 25.10.1991 i.e. four months prior to the date of accident which occurred on 29.02.1992. The driving licence was renewed w.e.f. 23.03.1992. Since the renewal of the licence was not within 30 days of the expiry, it was held that the driver did not possess any effective driving licence and there was breach of the terms of the policy.

10. In the circumstances, the Claims Tribunal was justified in making the Insurance Company liable to pay the compensation with a right to recover the same from the owner and the driver.

11. The Appeals filed by the Insurance Company (MAC APP. 717/2010) and filed by the driver and owner (MAC APP. 114/2011) are devoid of any merit; the same are accordingly dismissed.

12. By order dated 12.08.2011 while granting stay of the recovery against the Appellants (the driver and owner) in MAC APP. 114/2011, 25% of the award amount was ordered to be deposited with the Registrar General of this Court. If the said amount has been deposited, the same shall be payable to the Respondent Insurance Company. The Insurance Company shall be entitled to enforce the recovery rights in respect of the award amount paid to the Claimants.