
(2004) 07 AHC CK 0185
In the Allahabad High Court
Case No : Civil Revision No. 308 of 1988

New India Assurance Company Ltd.

APPELLANT

Vs

Janardan Mishra and Others

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 174

Citation : (2004) 3 ACC 468 : (2005) 1 AWC 750

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Shishir Kumar, for the Appellant; Madhur Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The respondent's son had died in an accident and accordingly, he moved an application for compensation under the Motor Vehicles Act. During the pendency of the proceedings the matter was taken up by Lok Adalat and the Court passed an order dated 29.3.1987, stating therein that the parties agreed that the compensation would be fixed at Rs. 17,000 and that this amount would be paid to the plaintiff only when the owner of the vehicle files a valid driving licence to the satisfaction of the counsel for the Insurance Company. The Court directed that the compensation amount would be paid within one month from the date of filing of the licence and in case the licence was not filed, the claim against the Company would be dismissed.

2. It transpires that the owner of the vehicle and the Insurance Company connived with each other and on the pretext that the driving licence was not filed by the owner, the Insurance Company did not pay the compensation amount to the claimant. Accordingly, the claimant filed an application before the executing court, stating therein that inspite of the order he has not been paid the compensation, and therefore, the Insurance Company be directed to pay the compensation. By the impugned order dated 11.2.1988, the executing court rejected the objection of the Insurance Company and directed the Insurance

Company to pay the compensation within two months. This impugned order dated 11.2.1988 has been challenged by the Insurance Company in the present civil revision.

3. Heard Sri Shishir Kumar, the learned counsel for the applicant and Sri Madhur Prakash, the learned counsel for the opposite parties.

4. The learned counsel for the applicant submitted that the Insurance Company is only liable to pay the compensation, provided, the driver of the vehicle had a valid driving licence. Since the owner of the vehicle did not produce the driving licence, the Insurance Company was not liable to pay the compensation as per the compromise.

5. In my view, the submission of the learned counsel for the applicant is devoid of any merit and is liable to be rejected. It is clear that the owner of the vehicle and the Insurance Company, have connived with each other on the basis of which the claimant has not been able to get the compensation. The Court below rightly exercised its jurisdiction in directing the Insurance Company to pay the compensation. In my view, there is no error in the impugned order passed by the court below.

6. In *National Insurance Company Ltd. v. Brij Pal Singh and Anr.* 2003 (50) ALR 522, a Division Bench of this Court held that :

"Pramod Kumar, respondent No. 3 (owner of the truck) having not produced the driving licence of the driver of the truck, it must be held that he had no valid driving licence. In view of this finding, the appellant Insurance Company is not legally liable to satisfy the award given against the owner of the vehicle.

We are, however, of the opinion that having regard to the object for which Chapters XI and XII of the Motor Vehicles Act were enacted and the conditions under which victims of road accidents are placed in this country, it will not be proper course of action to Just allow the appeal and set aside the award of the Tribunal rendering the claimant helpless. A practical solution of the problem has to be found out.

In the present case, the claimant is resident of a small town in the interior of district of Meerut, He appears to be a person of humble means. It will be extremely difficult for him to recover the compensation amount from the owner of the vehicle who is resident of Delhi. The appellant-Insurance Company should, therefore, pay the amount of compensation to the claimant and, therefore, recover the said amount from the owner in accordance with Section 174 of the Act."

7. This Court held that it would be impossible for the claimant to recover the amount from the owner and therefore, directed the Insurance Company to pay the amount who in turn was permitted to recover the same from the owner of the vehicle in accordance with the provisions of Section 174 of the Motor Vehicles Act.

8. In United India Insurance Company Ltd. Vs. Leheru and Others, the Supreme Court held :

"Thus, under Sub-section (1) the Insurance Company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become entitled to avoid or cancel or may have avoided or cancelled the policy."

9. The Supreme Court further held that :

"It is for this reason that the Legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the company is insurance. In all business there is an element of risk. All persons carrying on business must take risks associated with that business. Thus, it is equitable that the business which is run for making profits also bear the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz., that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

10. The principles enunciated aforesaid, by the Supreme Court as well as by a Division Bench of this Court would be clearly applicable in the present case. No doubt the Insurance Company would not be liable to pay the compensation if the insured vehicle was being driven by a person, who was not having a valid licence. The Insurance Company is liable to pay the amount of compensation to the claimant as per the decree and thereafter it is open to the Insurance Company to recover the same from the owner of the vehicle.

11. The accident occurred on 14.8.1984 in which the claimant lost his son and on the basis of a compromise, a compensation of Rs. 17,000 was fixed in the year 1987. The Insurance Company has filed this revision in the year 1988 and obtained an interim order. Twenty years have elapsed from the date of the accident and the claimant is yet to receive the compensation. The revision has been filed by the Insurance Company on a mere technicality. Instead of paying the amount, the Insurance Company chose to litigate and dragged the proceedings before this Court. Consequently, this revision is dismissed with costs, which is assessed at Rs. 10,000. In addition to this amount the Insurance Company is directed to pay a sum of Rs. 17,000 as awarded towards compensation along with interest at the rate of 8% per annum from the date of the filing of the application under the Motor Vehicles Act within two months from today and report compliance before this Court by filing an affidavit within ten weeks from today. It would be open to the Insurance Company to recover the amount so paid to the claimant from the owner of the vehicle.

12. The revision is dismissed with the aforesaid observations.