

(2006) 06 GAU CK 0039
In the Gauhati High Court

New India Assurance Company Ltd.

APPELLANT

Vs

Lily Borah and Others

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 168, 174

Citation : (2007) 2 ACC 575 : (2008) ACJ 1036 : (2006) 3 GLT 51

Hon'ble Judges : D. Biswas, J;A. Hazarika, J

Bench : Division Bench

Judgement

D. Biswas, J.—This appeal is directed against the award dated 17th December, 2003 passed by the learned Member, Motor Accident Claims Tribunal, Guwahati in M.A.C. case (DJK) No. 942 of 2003. The learned Member by the impugned award directed the appellant Insurance Company to pay a sum of Rs. 8,40,460 as compensation to the claimants for death of Prafulla Borah, a Havildar of Special Branch of Assam Police on 1st July, 2002 in a motor accident involving Bus No. AS-01/D-8886. This appeal has been filed reiterating the defence of the Insurance Company in terms of Section 149(2)(a) ii of the Motor Vehicles Act, 1988.

2. Mr. S.S. Sharma, learned Senior Counsel for the appellant Insurance Company submitted that the driver of the vehicle had no valid licence to drive the vehicle and, therefore, the Insurance Company is not liable to pay the compensation as ordered by the learned Member, Motor Accident Claims Tribunal. With reference to observations made in the award as well the evidence of DW 1 Manjit Das and DW 2 Atul Hazarika. Mr. Sharma submitted that the driver Krishanlal Purvey obtained a licence from the concerned office at Darbhanga, Bihar and it was renewed by the office of the DTO, Jorhat till 2nd August, 1993. There was no renewal subsequent to the aforesaid date and, therefore, on the date of accident i.e. on 1st July, 2002, the vehicle was driven by the driver without any valid licence.

3. Mr. D. Saikia, learned Counsel for the claimants argued that the evidence on

record would amply demonstrate that the driver had a driving licence valid till 2nd August, 1993 and from Exhibit-1, the report of the Investigating Officer it would appear that the licence was valid till 20th September, 2002. According to Mr. Saikia, the owner, is not supposed to know whether the licence was renewed after 2nd August, 1993 or that the licence in possession of the driver was manipulated and a fake one. Mr. Saikia argued that in such a situation, the Insurance Company cannot be absolved of its liability to pay compensation. In support of his contention Mr. Saikia relied upon the decisions of the Apex Court in United India Insurance Company Ltd. Vs. Leheru and Others, and in National Insurance Co. Ltd. Vs. Swaran Singh and Others,

4. At this stage, we would like to refer to the evidence on record. It would appear that Smt. Lily Borah, wife of the deceased stated that her husband, a Havildar in the Special Branch of Assam Police was travelling from Guwahati to North Lakhimpur by Bus No. AS-01/B-8886 on 1st July, 2002. The bus overturned on the roadside after hitting a tree and her husband died at the place of accident. She also exhibited the police report (Exhibit-1), the post-mortem report (Exhibit-2), the pay certificate (Exhibit-3) and the photostat copy of the F.I.R. (Exhibit-4). This witness was cross-examined by the learned Counsel for the Insurance Company. It appears that no question was asked to this witness about the genuineness of the police report which was tendered in evidence in original. From the police report Exhibit-1, we find that the Investigating Officer in his report against column No. 7 (B) has clearly mentioned that the driving licence No. 9309/Jorhat was valid upto 20th September, 2002. DWs 1 and 2 in their evidence have categorically stated that the licence was renewed by the office of the DTO, Jorhat till 2nd August, 1993. The evidence of DW 1 Manjit Das and that of DW 2 Atul Hazarika to this effect are based on the records available in the office of the DTO, Jorhat, if the licence was renewed after 1993 from any other office within or outside the State, It is not likely to be reflected in records of the office of the DTO, Jorhat.

5. From the evidence of DWs 1 and 2, it appears that the driver had a valid licence at least till 1993 and from the accident report submitted by the Investigating Officer (Exhibit-1), it appears that the licence was valid upto 20th September, 2002. If the renewal as noticed by the Investigating Officer was from any other office, then the driving licence cannot be faulted with. Renewal of driving licence from DTOs of other districts is also permissible under the rules. On the other hand if the driving licence was manipulated and it was shown to be valid till 20th September, 2002 as noticed by the Investigating Officer, the owner of the vehicle was not supposed to have any knowledge of such manipulation. The Hon'ble Supreme Court in Swaran Singh (supra), in para 100, summarized the findings. The excerpts relevant therefrom are quoted below:

(i)

(ii)

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section 2(a)(ii) of Section 149, has 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 the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance Companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v)

(vi)....

(vii)

(viii)

(ix)

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi)

It would appear from the observation of the Hon"ble Supreme Court (quoted above that 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. A duty has been cast on the insurer to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter. There is no evidence in the instant case to this effect.

6. In *Lehru and Others* (supra), in para 20, the duty of an owner of a vehicle has been spelt out. The observation made in para 20 is quoted below:

20 When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make inquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus, 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)(ii). 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 be innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia*, *Sohan Lal Passi* and *Kamla* cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

7. In the instant case, though the owner has not appeared before the learned Tribunal or before this Court despite service of notice, the burden cast upon the owner has been discharged by the claimants by exhibiting the police report.

8. We have discussed hereinbefore the eventualities. Firstly, if the driving licence was renewed till 20th September, 2002 from any other office of DTO in the country, the noting of the Investigating Officer in the accident report to this justifies that the driver at the relevant time had a valid driving licence. On the other hand, if it was manipulated without renewal from any competent authority, neither the Investigating Officer nor the owner could have the knowledge of such manipulation unless otherwise brought to their notice. There is absolutely no evidence on record to show that the owner was aware that the driving licence of the driver employed by him was not renewed after 2nd August, 1993 or the same was manipulated so as to appear as valid till 20th September, 2002.

9. For the reasons above, we find that the appeal is devoid of merit and deserves dismissal.

10. Accordingly, the appeal is dismissed.