
(1989) 01 AP CK 0023
In the Andhra Pradesh High Court

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Pavan Kumar and Others	RESPONDENT

Date of Decision : 16-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1990) 67 CompCas 478

Hon'ble Judges : K.R. Ramaswamy, J

Bench : Single Bench

Advocate : K. Mangachary, for the Appellant; B. Tharakam, for the Respondent

Judgement

K. Ramaswamy, J.—The only point raised by the appellant-insurance company is that the driver, second respondent, was not duly licensed to drive the vehicle (tractor) bearing No. APJ 6229 on the date of accident and that, therefore, the insurance company is not liable for payment of the amount awarded by the Tribunal below. Now, the facts found are that the claimant is a minor boy and that he met with an accident on March 28, 1980, at about 6 p. m. when the tractor bearing APJ 6229 had run over him by its front wheel when he was playing in front of his house on the road leading to Quila at Nizamabad. His left leg extending middle down to foot, all the muscles, have been torn and inspite of best treatment rendered to him at Nizamabad and Hyderabad from March 29, 1980, to June 26, 1980, it was not cured and he permanently became disabled. As a result, he laid a claim in a sum of Rs. 45,000. The Tribunal below awarded a sum of Rs. 32,000 in all. Assailing the legality thereof, the appeal has been filed.

2. The sole contention raised by Sri Mangachary, learned counsel for the appellant-company, is that the second respondent has not proved that he was holding a valid licence as on the date when the accident occurred; the appellant has raised a specific plea but the Tribunal below has wrongly placed the burden on the appellant; if the appellant had in its possession valid evidence and not placed it, then the court would have drawn an inference adverse to it ; the court ought to have placed the burden on the second respondent that he was having a

valid licence. Therefore, the Tribunal below has committed an error of law in awarding the amount as against the insurance company. Therefore, the only question that arises for consideration is whether the finding of Tribunal below that the appellant has not established that the second respondent is not having a valid licence, is sustainable in law.

3. u/s 96(2)(b)(ii) of the Motor Vehicles Act, 1939 (Act 4 of 1939) (for short "the Act"), the insurer is entitled to raise all the pleas open to it to defend the claim for compensation including the ground that the vehicle was driven by a person who was not duly licensed. Therefore, it is open to the insurance company to raise the plea that the second respondent was not possessed of a valid licence. Then the question is whether the appellant has discharged its burden. Sri Mangachary is right in contending that if the appellant has been in possession of evidence and it withheld the same, an adverse inference could be drawn against the appellant. But, here, it is one of the pleas taken by the appellant. The specific plea taken by the appellant is that the second respondent is not possessed of a valid licence on the date when the accident had occurred. Therefore, the burden is on the insurance company to establish that fact by adduction of material evidence in that regard, viz, the licence issued by the competent authority and the validity thereof. If some evidence has been adduced by the appellant to show that the driver is not holding a valid licence as on the date of accident, then, necessarily, the burden shifts to the driver or the claimant to establish that the driver is having a valid licence. When the appellant has not placed any material before the court, then it is a case of non-adduction of any evidence to substantiate its plea. In an analogous situation, the Supreme Court had to consider a case in *Bishan Devi v. Sirbaksh Singh* [1981] 51 Comp Cas 128. Kailasam J., speaking for the court, has considered the circumstances and held thus (at page 135):

"Apart from making the averment in his written statement, the insurer did not take any steps to establish that the vehicle was driven by a person who was not properly licensed.... It is the duty of the insurer to have substantiated the plea...."

4. Thus, the Supreme Court has squarely held that where the person who raised the plea is the insurer and the burden is on the insurer to establish by adduction of evidence that the driver is not having a valid licence. In similar circumstances, the Rajasthan High Court in *Bhairon and Others Vs. Nandram and Others*, has considered the question where some plea was taken by the insurance company and no evidence was adduced to prove that the driver was not having a valid licence, it was held that the insurance company having failed to adduce evidence in proof of the fact that the driver is not having a valid licence as on the date of accident, the claimant is entitled to compensation claimed as against the insurance company. Thus, it is well- settled that if a specific plea is taken by the insurance company u/s 96(2)(b)(ii), it is for the insurer to substantiate the same by adduction of evidence as regards the validity of the licence possessed by the

driver. Mere taking a plea does not amount to proof of the allegation. It is only an averment. Unless it is substantiated by adduction of acceptable evidence, the averment or plea cannot be said to have proved. Unless there is proof of it, the question of disproof by the claimant or the driver does not arise. Accordingly, I do not find any illegality in the award passed by the Tribunal warranting interference. The appeal is dismissed. No costs.