

(2014) 01 DEL CK 0340
In the Delhi High Court
Case No : Mac. App. 732 of 2006

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Biro Devi and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12
Motor Vehicles Act, 1988 — Section 149(2) 155
Succession Act, 1925 — Section 306

Citation : (2014) 1 ACC 390 : (2015) ACJ 340 : (2015) 1 AnWR 260

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Ashok Popli, Advocate for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Partly Allowed

Judgement

Suresh Kait, J.—Vide the present appeal, the appellant/Insurance Company has assailed the impugned award dated 04.07.2006, whereby the learned Tribunal has granted compensation for a sum of Rs. 11,30,000/- with interest at the rate of 7% per annum from the date of filing the claim petition till realization of the amount. Brief facts of the case are that on 05.05.1998 at about 9.40 pm, deceased Jasbir Singh was going on his motorcycle bearing registration No. DL-1SK-0107 cautiously and in a normal speed. All of a sudden, a Tempo bearing registration No. DL-1LB-6247 driven by respondent No. 5 came in a rash and negligent manner and hit against his motorcycle. As a result of the said accident, he died on the spot.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that the learned Tribunal had erred in holding that the appellant/Insurance Company failed to prove that insured was having knowledge that driving licence of the driver/respondent No. 5 was not for LMV (Commercial) and that insured had engaged him without due care and precaution.

3. He submitted that it was the duty of the insured to see the contents of the driving licence at the time of appointing the driver. Merely by perusing the driving licence, one can say that the licence is valid or not to drive the commercial vehicle. Therefore, the owner ought to have the knowledge that driver was not competent to drive the commercial vehicle.

4. Learned counsel further argued that the learned Tribunal failed to appreciate that the insurer of the motor vehicle cannot be held liable to pay compensation to the third party if the driver of the said vehicle does not possess a valid and effective driving licence.

5. He further submitted, the claimants failed to bring on record legal heirs of the insured despite the fact that he was reported to have died and the liability of the Insurance Company is only to reimburse the insured if permissible under the terms and conditions of the policy. Since the present award is not enforceable against legal heirs of the deceased insured, therefore, the appellant/Insurance Company also cannot be held liable, hence, the impugned award dated 04.07.2006 is liable to be set aside.

6. To strengthen his arguments, learned counsel has relied upon a case of National Insurance Co. Ltd. Vs. Kusum Rai and Others, wherein the Apex Court has held that where the licence was for LMV and the driver was driving a taxi, which falls within the definition of transport vehicle, in that eventuality, the Insurance Company was not liable to pay the claimed amount as driver was not holding a valid licence.

7. He further submitted that in the present case, though respondent No. 5/driver of the offending vehicle was holding a licence for driving LMV but he was driving LMV (Commercial), which is apparently a breach of terms of the policy.

8. RW1 Sanjeev Kumar, LDC, from the office of MLO, South-West Zone, Palam has produced the report regarding driving licence of respondent No. 5 bearing No. P-96070395/SW Zone, issued on 05.07.1996 to drive Light Motor Vehicle. The said licence was valid upto 04.07.2001 and accident had taken place on 05.05.1998. He categorically stated that the licence was not to drive commercial vehicle.

9. R3W2 Shri P.R. Bansal deposed that the appellant/Insurance Company had given a notice u/s 12 Rule 8 CPC to the driver and owner of the offending vehicle through their counsel, which is Ex. R3W2/1 and R3W2/2. Postal receipts thereto are Ex. R3W2/3. Both the registered envelopes were received back unserved. Registered cover sent to owner received back with remark "receiver died", while registered cover of driver Sarvajeet Singh received back with remarks "refused to take". Both these envelopes are Ex. R3W2/4 and R3W2/5.

10. Learned counsel argued that since there was a breach of terms of the insurance policy and the insured died during the trial, in that eventuality, duty of the claimants was to implead legal heirs of the deceased insured/owner of the

offending vehicle. Failing which, the learned Tribunal ought to have granted recovery rights against the driver and estate of the owner of the offending vehicle.

11. The Apex Court in a case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has held that the Insurance Company is required to establish the breach of terms and conditions of insurance policy by leading cogent evidence. If the Insurance Company fails to prove that there has been breach of conditions of the policy on the part of an insured, then Insurance Company cannot be absolved of its liability.

12. In the case in hand, the appellant/Insurance Company has failed to prove that the insured did not take reasonable care in the matter of fulfilling the condition of the insurance policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. Even where the Insurance Company is able to prove breach on part of the insured regarding holding of a valid driving licence, the insurer would not be allowed to avoid its liability towards insured unless the said breach of condition of the policy is so fundamental, as is found to have contributed to the cause of the accident.

13. In case of United India Insurance Company Ltd. Vs. Lehu and Others, , the Supreme Court has held that if it ultimately turns out that licence was fake, the Insurance Company would continue to remain liable unless it is proved that the owner/insured was aware or had noticed that licence was fake and still permitted that person to drive.

14. From the statement of RW1, it is clear that respondent No. 5/driver of the offending vehicle was having a driving licence for driving Light Motor Vehicle, but it was not for driving Light Motor Vehicle (Commercial).

15. The intention of the Legislature in engrafting relevant provisions under the Motor Vehicles Act is that a driver should have skill to drive a particular category of vehicle. In the present case, respondent No. 5 was having a valid driving license for driving LMV but he was not having license for driving the commercial vehicle. Difference is only of technical nature. Respondent No. 5 was competent to drive LMV. It hardly matter whether LMV was private or commercial.

16. The Apex Court in the case of Swarn Singh(supra), held that if the vehicle was driven by a person holding a learner's license at the time of the accident, the Insurance Company is liable to satisfy the award. In para 102 (VI), held as under:-

102...

(i)...

(ii)...

(iii)...

(iv)...

(v)...

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act.

17. In the case of Oriental Insurance Co. Ltd. and Others Vs. Rakesh Kumar and Others, it is observed that in claims for compensation for accidents, various kinds of breaches regarding the conditions of driving licenses arise for consideration before the Tribunals, like a person possessing a driving license for motorcycle without gear for which he has no license. Cases may also arise where holder of driving license of a "Light Motor Vehicle" is found to be driving a "Maxi Cab", "Motor Cab" or an Omni Bus", for which he has no license. In each case, on evidence being led before the Claims Tribunal, a decision has to be taken whether the fact of driver's possessing license for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused as a result or cause of some other unforeseen or intervening causes like mechanical fault and similar other causes, having non-access with driver's not possessing requisite type of license, the insurer will not be allowed to avoid its liability, merely for technical breach of conditions concerning the driving license.

18. In the present case, the appellant/Insurance Company has failed to prove that insured was having knowledge that driving license of the driver of the offending vehicle was not for driving LMV (Commercial) and that he engaged him without due care and precaution. The appellant/Insurance Company has also failed to prove that such breach of condition of driving license was so fundamental as found to have contributed to the cause of accident. Appellant company has not produced any evidence to prove that the technical difference of not having driving license for LMV (Commercial) has contributed to this accident.

19. Admittedly, the respondent No. 5 was possessing driving license to drive LMV and the vehicle in question is also LMV. There is no evidence that the insured had the knowledge that the driver was not holding valid driving licence, therefore, there was no wilful breach of terms of the insurance policy.

20. So far as the issue raised by the appellant/Insurance Company that the claimants did not implead the legal heirs of deceased owner of the offending vehicle, thus the claim petition stood abated against the insured of the vehicle. Consequently, the claim petition also abated against the appellant/Insurance

Company, thus not liable to pay any compensation.

21. Section 155 of the Motor Vehicles Act, 1988 (hereinafter to be referred as "the Act") prescribes as under:-

155. Effect of death on certain causes of action. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, (39 of 1925.) the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

22. On perusal of the aforesaid Section, it is clear that the liability of the owner arises independently under the Provisions of Chapter VIII of the Act as it does not bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. Therefore, the death of the owner of the vehicle is not a ground for evading the liability. Moreover, it has no legal significance in the contractual relationship between the insurer and insured for the purpose of fastening the liability.

23. Moreover, the appellant/Insurance Company has examined R3W2, Shri P.R. Bansal, who produced two postal receipts Ex. R3W2/3. Both the registered envelopes were received back unserved; one with remark "receiver died" and another with remarks "refused to take". Despite, the Insurance Company had made no efforts to ascertain or to bring legal heirs of the deceased owner of the offending vehicle on record.

24. As argued by learned counsel for the appellant/Insurance Company, admittedly, age of the deceased at the time of accident was 27 years, despite that the learned Tribunal has wrongly applied multiplier of 18 instead of 17, which is contrary to the settled provisions of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

25. Learned counsel appearing on behalf of the respondents/claimants has submitted that he does not dispute the legal proposition advanced by learned counsel for the appellant/Insurance Company, therefore, multiplicand of 17 can be applied and the compensation amount can be reduced accordingly.

26. In view of the settled law and statement of learned counsel of respondents/claimants, the multiplier of 17 is taken in the present case. Accordingly the compensation amount under the head of loss of dependency is reduced to Rs. 10,20,000/-.

27. In view of above, present appeal is partially allowed.

28. Consequently, the statutory amount and excess deposited amount with proportionate interest be released in favour of the appellant/Insurance Company. Remaining compensation amount shall be released in favour of the respondents/claimants on taking necessary steps by them.