(2016) 08 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : CIMA No. 49 of 2011, MP No. 01 of 2016 c/w CIMA No. 51 of 2011 and CIMA No. 50 of 2011

Oriental Insurance Company Ltd. — APPELLANT

Vs

Hem Raj — RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, Section 166, Section 173

Citation : (2016) 4 JKJ 42

Hon'ble Judges : Mr. Janak Raj Kotwal, J.

Bench : Single Bench

Advocate : Mr Jatinder Singh, Advocate and Mr. Navneet Dubey, Advocate, for the Respondent; Mr. D.S. Chouhan, Advocate, for the Appellant/Petitioner

Final Decision : Partly Allowed

Judgement

Mr. Janak Raj Kotwal, J. - These three appeals are directed against a common judgment and awards rendered by the learned Motor Accident

Claims Tribunal, Jammu (for short the Tribunal) in Claim Nos. 32/Claim, 33/Claim and 34/Claim.

2. I have heard learned counsel for the parties and perused the record.

3. The three claim petitions arose from a road traffic accident caused by a Tata Sumo vehicle bearing registration No. JK02B 4848 on

10.01.2006. The offending vehicle had knocked down a motorcycle being driving by claimant, Hem Raj with claimant, Neetu Kumar on its pillion

and the claimant, Ram Krishan, who was walking on the side of the road. All the three suffered injuries in this accident. Learned Tribunal awarded

compensation of Rs. 14,23,000/- to Hem Raj, Rs. 1,74,000/- to Neetu Kumar and Rs. 1,46,800/- to Ram Krishan and foisted liability of satisfying the awards on the appellant, with whom the offending vehicle was insured for third party risk.

4. The appellant assails the judgment and awards insofar as it foists the liability of satisfying the awards on it on the ground that it has proved before

the Tribunal that driver of the offending vehicle, Madan Lal-respondent No. 3, did not possess a valid and effective driving license at the time of

accident but the learned Tribunal erred in directing that awards shall be satisfied by the appellant/insurer. It is contended that there was a breach of

policy condition as the driving license held by the driver had expired prior to the date of accident.

5. The defence in regard to the breach of policy condition regarding the holding of' valid driving license was taken by the appellant before the

Tribunal and was incorporated in issue No. 3 by the learned Tribunal. The driver of the offending vehicle, Madan Lal-respondent No. 3 in the

claim petition-appeared before learned Tribunal as appellant's witness. He produced photocopy of his driving license bearing No. 58924/J issued

by RTO, Jammu. This photocopy shows the date of issue of the license as 13.11.1986 and entry showing its renewal up to 06.04.2009. The

appellant/insurer also produced Satish Kumar, a clerk of RTO Office, Jammu as its witness. He proved a certificate (Mark-A) issued by the then

RTO, Jammu, Nanak Chand. Evidence rendered by him read along with the certificate issued by the RTO shows that aforementioned license had

been issued on 13.11.1986, it was earlier renewed up to 14.06.2005 and latest renewal was from 07.04.2006 to 07.04.2009. Evidence further

shows that the said license authorised Madan Lal to drive Heavy Goods Vehicle and Light Motor Vehicle and was also endorsed for driving

Public Service Vehicle vide endorsement No. 4736, dated 22.08.2008. Appellant also produced before the Tribunal its Senior Assistant, S.K.

Bhat, who proved the insurance policy containing a condition that company shall not be liable if vehicle is driven by a person not possessing valid

driving license.

6. Learned Tribunal in face of the evidence of RW-Satish Kumar assumed that the driving license of the offending driving was not renewed during

the interceding period comprising the date of accident and was renewed after the accident but held that 'insurance company was required to place clinching evidence on record to substantiate and proved that around the time of occurrence, the respondent-owner was not holding valid and

effective driving license.' Learned Tribunal further held that ""respondent is found to have been holding license with effect from 13.11.1986 which

stands renewed up to 6.4.2009 in as much as on 22.1.2001. It was also put with PSV endorsement No. 4736/MVD/Registering Authority Jammu

dated 22.1.2001 meaning thereby the respondent driver had got valid and effective driving license.

7. Mr. D.S. Chouhan, learned counsel for the appellant, submitted precisely that evidence led by the appellant before learned Tribunal establishes

that the driving license of the offending driver was not renewed after 14.06.2005 up to 07.04.2006 which comprises of the date of accident having

occurred on 10.01.2006. Mr. Chauhan argued that no application for renewal of the license was made by the driver within thirty days after its

expiry on 14.06.2005 so the renewal had taken effect from 07.04.2006 and thus it stands established that driver was not holding valid and

effective license at the time of accident so breach of the relevant policy condition was sufficiently proved that exonerates the appellant/insurer

liability to indemnity the insured(owner).

8. Per contra, Mr. Jatinder Singh and Mr. Navneet Dubey, learned counsel for the respondents supported the award. They argued that breach on

the part of the owner has not been proved and in any case insurer cannot be exonerated as the license was valid shortly before the accident and

was renewed shortly after the accident and the driver had never been disqualified from holding a driving license.

9. On plain reading of the finding recorded by the Tribunal, it appears learned Tribunal has created confusion and has neither appreciated

appellant's evidence in proper perspective nor addressed the question involved in the matter. There is no denial of the fact that the license held by

the driver authorised him to drive a vehicle of the type the offending vehicle is. It is sufficiently proved from the evidence of RW-Satish Kumar that

license after its expiry on 14.06.2005 was renewed on 07.06.2006 and it was not stated by the driver that he had applied for renewal of the

license within thirty days after its expiry on 14.06.2005. The license held by the driver of the offending vehicle, therefore, was not effective and valid after 14.06.2005 up to 07.04.2006 and this period comprised of the date of accident that occurred on 10.01.2006. The owner of the vehicle

and the driver did not contest the claim before the learned Tribunal. Evidence of the driver read with evidence of S.K. Bhat proves also that there

had been a breach of the policy condition relating to driving of the vehicle by a person being duly licensed to drive the vehicle of that type.

10. The question that learned Tribunal should have addressed and now arises for consideration of this Court is; whether in face of the

aforementioned breach the appellant/insurer should have been unconditionally exonerated or should have been given a right to recover the award

amount from the insured after satisfying the award

11. Authorities relating to the aforementioned question have been noticed. In National Insurance Co. Ltd v. Swarn Singh & Ors. 2004 ACJ 1

learned three-Judge Bench of the Supreme Court has held that even where the insurer establishes breach on the part of the insured concerning the

policy condition regarding the holding of the valid license by the driver, the insurer would not be allowed to avoid its liability towards the insure

'unless the said breach or the breaches or the condition of driving license is so fundamental as are found to have contributed to the cause of

accident.' Supreme Court has further held that where ""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.

12. In Ishwar Chandra's case, 2007 ACJ 1067, the driver of the offending vehicle w as not holding a valid driving license as at the time of

accident though it was later renewed. Learned Claims Tribunal foisted liability on the insurance company. The High Court, while dismissing appeal

filed by the insurance company, gave it liberty to recover the amount in question from the insured. The Supreme Court dismissed the appeal filed

by the insurance company.

13. In Ram Babu Tiwari's case. 2008 AIR SCW 6512, the accident occurred on 27.01.1996. The driver was having valid license for the

period 11.02.1990 to 10.02.1993 and again from 07.02.1996 to 07.02.1999. The license was not valid on the date of accident. Learned Tribunal

did not exonerate the insurer. In appeal the High Court 'in view of the law laid down by the Apex Court in the case of Swarn Singh' held that the

amount of compensation shall be paid by the insurer and the same shall be recovered from the driver and owner of the vehicle and held also that

the Claims Tribunal has erred in not giving the direction that insurer can recover the amount paid to the claimants from the insurer. Appeal filed by

the insurer came to be dismissed by the Supreme Court.

14. The five-Judge Bench judgment dated 21.01.2015 of the High Court of Kerala in Paulose's case, MACA No. 585 of 2003 involves similar

fact situation. The driving license of the d river had expired by the date of accident and was not renewed within thirty days thereafter. Learned

court allowed the appeal giving liberty to the insurance company to recover the amount from the owner of the vehicle.

15. In the case on hand license of the driver had expired prior to the date of accident. The application for renewal was not made by the driver

within prescribed period of thirty days. After the accident license was renewed. The driver, therefore, was not holding a valid and effective license

on the date of accident and breach of policy condition regarding the holding of a valid license by the driver was proved. In that the appellant/insurer

is exonerated of its liability to indemnify the owner/insured by satisfying the award. The benefit of exoneration, however, cannot be given at the cost

and to inconvenience of the claimants, particularly when it does not appear that expiry of the license and its non renewal in time has contributed

towards the accident. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant. Preponderance of

authorities in such cases is that the insurer is asked to pay the awarded amount to the claimants and recover-the amount from the insured.

16. Viewed thus, this appeal is partly allowed by giving liberty to the appellant/ insurance company to recover the amount from insured/owner of

the offending vehicle after satisfying the awards of the Tribunal.

17. The amount, if deposited, in this Court shall be disbursed in favour of the claimants without, however, insisting upon the fix deposits to be made

under the direction of the Tribunal.

18. Record of the Tribunal be remitted back along with a copy of this order.

