
(2013) 02 DEL CK 0058
In the Delhi High Court
Case No : Mac. App. No. 812/2006

R.K. Jain

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0058

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Judgement

J.R. Midha, J.—The appellant has challenged the award of the Claims Tribunal on the limited ground that respondent no. 3 is not entitled to recover the award amount from the appellant. The accident dated 17th March, 2002 resulted in grievous injuries to respondent no. 1 who filed a claim petition against the driver, owner and Insurance Company of the offending car no. DL 4CG 6314. The appellant is the owner, respondent no. 2 is the driver and respondent no. 3 is the Insurance Company of the said car.

2. Respondent no. 3 defended the claim petition on the ground that the driving licence of the driver of the offending vehicle was fake. Respondent no. 3 examined R3W1 who proved the report of the Investigator - Ex.R3W1/9. As per Ex.R3W1/9, driving licence No. WB-01-256879 was issued in the name of Anjanabha Basu and not in the name of Aditya Kumar, driver of the offending vehicle. The Claims Tribunal granted recovery rights to respondent no. 3 on the ground that the driving licence of the driver of the offending vehicle was proved to be fake.

3. The learned counsel for the appellant submits that the appellant appeared in the witness box as R2W1 and deposed that the driver was holding a driving licence at the time of the accident.

4. The law on the subject of fake driving licence is well settled by the judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and

Others, wherein the Court held as under:-

SUMMARY OF FINDINGS:

106. The summary of our findings to the various issues as raised in these petitions are as follows:

(i)

(ii) Insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Subsection (2)(a)(ii) of Section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, 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) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(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.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

5. This case is squarely covered by the aforesaid judgment of the Supreme Court. There is no evidence to show that the appellant was aware that the

driving licence of the driver was fake. Respondent no. 3 has failed to prove that the appellant was aware that the driving licence was fake and he entrusted the offending vehicle or permitted the driver knowing the driving licence to be fake. On the other hand, the appellant has deposed on oath before the Claims Tribunal that he believed the driving licence of the driver to be genuine. Respondent no. 3 is, therefore, not entitled to recovery rights against the appellant. The appeal is allowed and the award is modified to the limited extent insofar as the Claim Tribunal has granted recovery rights to respondent no. 3 to recover the award amount from the appellant. Consequently, respondent no. 3 shall not be entitled to recovery rights against the appellant.