
(2012) 01 DEL CK 0111
In the Delhi High Court
Case No : MAC. APP. 394 of 2009

Satinder Sharma

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0111

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : K.K. Srivastava, Mr. Sadashiv Gupta, for the Appellant; A.K. Soni, Advocate for Insurance Company, for the Respondent

Judgement

G.P. Mittal, J.

CM APPL. 11543/2009 (delay in filing) and CM APPL. 11544/2009 (delay in refilling) in MAC.APP. 394/2009

1. There is a delay of 491 days in filing the appeal and 46 days in refilling the appeal. For the reasons stated in the applications, the same are allowed. The delay in filing and refilling the appeal is condoned.

MAC.APP. 394/2009

2. The Appellant Satinder Sharma, owner of vehicle number HR-51-GA-5891 which caused injuries resulting in death of Karan, impugns the judgment dated 17.10.2005 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby while awarding compensation in favour of the Claimants to be paid by the Oriental Insurance Company, the Insurance Company was given right to recover the compensation from the Appellant.

3. In para 29 of the impugned award, the Tribunal held as under:-

29. R3W1 Sh. Sandeep Raina evidence has proved that driving licence was in the name of Pitamber Rai and not in the name of driver Sanjay Kumar Mukhiya.

Therefore, Insurance Company is at liberty to recover the amount from the respondent no.1 being owner and respondent no.2 being Insurer of the offending vehicle are jointly and severally liable to pay the amount of compensation to petitioners.

4. It is urged by the learned counsel for the Appellant that the driver was employed after verifying the genuineness of the licence and testing his driving skills. Thus, the Appellant was not guilty of any willful breach of the condition of policy and the Insurance Company was not entitled to avoid the liability u/s 149(2)(a)(ii) of the Motor Vehicles Act.

5. It is well settled that once insured proves that the accident is covered by the compulsory Insurance Clause, the onus is on the insurer to prove that it comes within an exception. The Insurance Company in order to avoid its liability is not only to show that the condition laid down u/s 149(2)(a) or (b) are satisfied but it is further required to establish that there was a willful and conscious breach of the terms of the policy.

6. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , a three Judges Bench of the Supreme Court held as under:-

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

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51. It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be".

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66. A bare perusal of the provisions of Section 149 of the Act leads to only one conclusion that usual rule is that once the assured proves that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception.

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69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability, (See Sohan Lal Passi Vs. P. Sesh Reddy and others, .

7. It is not disputed that the vehicle involved in the accident was duly covered under policy of Insurance issued by the Respondent Insurance Company on the date of the accident. Thus, it was for the Insurance Company to establish that there was a willful breach of any term of the policy. Allowing a vehicle to be driven by a driver who does not possess a valid licence or who has an invalid driving licence is obviously breach of the terms of the policy.

8. In this case the Respondent Insurance Company examined R3W1 Sandeep Raina (Stenographer) of Oriental Insurance Company to prove that the driving licence Ex.R3W1/A held by the driver i.e. Sanjay Kumar Mukhiya was fake. The relevant part of this witness testimony is extracted hereunder:-

....The driving licence of the driver was got verified by our company through our Divisional Office, Calcutta through the Investigator. As per the report of the licensing authority, Calcutta the said license was issued in the name of Pitamber Rai and not in the name of Sanjay Mukhia. The forwarding letter of our DO, Calcutta is Ex.R3W1/B. The report of our investigator along with the report of the licensing authority, Calcutta are Ex.R3W1/C and Ex.R3W1/D.....

9. This witness himself did not verify the genuineness of the licence. He simply produced the alleged report of the Licensing Authority, Calcutta Ex.R3W1/C. In my view, R3W1 could not legally prove the report Ex.R3W1/C. The execution/ authorship of a document may be proved by direct evidence i.e. by examining the writer or a person who saw the document written and signed or by circumstantial evidence by examining the expert or by the opinion of non-expert who is acquainted with the handwriting of the person who signed the document.

10. The question of proof of a Sanction Order signed by the Sanctioning Authority for prosecution under the Prevention of Food Adulteration Act came up before this Court in State Vs. Brij Mohan, . In para 9 of the report, it was held as under:-

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents

other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the handwriting of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a nonexpert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act).....

11. In this case R3W1 does not say that the report Ex.R3W1/C was signed by the Motor Licensing Officer in his presence or that he was conversant with his handwriting. Thus, the report Ex.R3W1/C cannot be admitted in evidence.

12. Since the Insurance Company failed to prove that the copy of the driving licence Ex.R3W1/A was not valid and effective, it failed to discharge the onus of proving the breach of the terms of the policy. The Insurance Company, therefore, cannot avoid liability to pay the compensation.

13. The impugned order of the Tribunal granting recovery rights to the Insurance Company against the Appellant is set aside.

14. The Appeal is allowed in above terms.

15. Pending application also stand disposed of.