
(2008) 02 DEL CK 0168
In the Delhi High Court
Case No : MAC APP No. 139 of 2007

Shri Deepak Kumar

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 181, 3

Citation : (2008) 8 ILR Delhi 41 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sunil K. Kalra, for the Appellant; Mohan Babu Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellant seeks to challenge the impugned award whereby recovery rights have been given by the Tribunal to recover the award amount.

2. Brief facts of the case are that one Shri Mohd. Jaffar (claimant) received injuries in a road side accident on 27.9.2004 which took place due to rash and negligent driving of the RTV No.DL-1VA-2238. The plea of the claimant was that this accident took place due to the sole negligence of the RTV driver. He had claimed compensation of Rs. 5.00 lacs from the owner and insurer of the offending vehicle.

3. The claimant moved the Tribunal and the Tribunal vide its order dated 6.10.2006 awarded a sum of Rs. 44,000/- in favor of claimant along with interest @ 6% from the date of filing of the petition till the date of realization.

4. Mr. Sunil K. Kalra, counsel appearing for the appellant contends that the appellant deposed before the Tribunal that he had taken all reasonable care to personally verify the driving license before giving employment to Mr. Mashook Ali as the driver of the offending vehicle. Inviting my attention to his testimony as

RW 1/1, the counsel contended that the appellant asked the driver to produce his driving license and when he produced a photocopy of the driving license and satisfied himself about the factum of the driver holding a valid driving license and of the fact of his being a trained driver, the appellant employed him as driver of his RTV. Counsel for the appellant further contends that the respondent/ Insurance Company has failed to prove on record any willful breach on the part of the appellant violating the terms and conditions of the policy.

5. Counsel for the appellant has also placed reliance on the judgments of the Apex Court in *National Insurance Co. Ltd. v. Swaran Singh and Ors.* 2004 (2) RCR 114; *United India Insurance Co. Ltd. v. Lehu and Ors.* 2003 (1) JCC 569; and *Lal Chand v. Oriental Insurance Co. Ltd.* 2006 (4) LRC 93. Based on the said judgments, counsel for the appellant contends that it was for the Insurance Company to have proved that the insurer, namely, the owner of the vehicle, was guilty of negligence and had failed to exercise reasonable care in fulfilling the conditions of the policy regarding use of his vehicle by a duly authorized driver or that the driver was not qualified to drive at the relevant point of time. Counsel for the appellant has particularly drawn my attention to sub-para (iii) of para 105 of the judgment in *National Insurance Co. Ltd. v. Swaran Singh and Ors.* (supra) to contend that mere absence, fake or invalid driving license or disqualification of a driver for driving at the relevant time are not in themselves defenses available to the insurer against the insured or the third parties. The said sub-para is reproduced as under:

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

(i) ...

(ii) ...

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving license of the driver, as contained in Sub-section (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 license or disqualification of the driver for driving at the relevant time, are not in themselves defenses available to the insurer against either the insured or the third parties. To avoid its liability toward insured, the insurer has to prove that the insurer was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

6. Per Contra, Mr. Mohan Babu Agarwal, counsel for the respondent submits that in the present case the driver of the offending vehicle was charged u/s 3/181 of the Motor Vehicles Act and certified copy of the charge-sheet was duly proved on record as Ex.P1. Counsel, thus, submits that once the driver of the offending vehicle was duly challaned under the said provisions, that in itself is sufficient to show that the driver was not in possession of any driving license. Counsel further

submits that the respondent/Insurance Company was not in a position to summon any records from the Licensing Authority as no particulars of the fake or other driving license were available on record. Counsel, thus, submits that in the absence of any such record, the Insurance Company was not in a position to lead any better evidence to prove the fact of driver not holding a license. Counsel, thus, submits that the Insurance Company has discharged its onus and thereafter the onus shifted upon the owner to have produced and proved the driving license of the driver on record.

7. I have heard learned Counsel for the parties and have perused the record.

8. It is the settled legal position that it is for the insurer to produce evidence on record and to satisfy the Tribunal that there is a willful breach of the terms and conditions of the policy by the insured. The Apex Court has already taken a view that mere absence, fake or invalid driving license or disqualification of the driver for driving the vehicle at the relevant time are not in themselves defenses available to the insurer against either the insured or the third parties and to avoid its liability towards the insured, the insurer has to prove on record that there was negligence on the part of the insured in fulfilling the terms and conditions of the policy and the insured has failed to exercise reasonable care in the matter of fulfilling such conditions. Merely because the driver was challaned under Sections 3/181 of the M.V. Act in itself would not suffice to prove that the driver of the offending vehicle was not having a valid driving license. May be on the relevant date of the accident the driver might not have been found in possession of the license which could have invited his prosecution for violating Section 3/181 of M.V. Act but this does not necessarily lead to an inference that the driver was not having a valid driving license at all. The claimants in the compensation case did not implead the driver of the offending vehicle in the claim petition and in such circumstances it was the bounden duty of the insurer to have served a notice under Order 12 Rule 8 to summon the driving license from the driver or owner of the offending vehicle and also could have taken steps to summon the driver as a witness in the case. The respondent insurer has failed to take any such steps. On the other hand, the appellant/owner had entered the witness box and has duly proved on record that he had taken adequate steps and reasonable care to verify the driving license of the driver before giving employment to the driver.

9. I am, Therefore, in agreement with the contentions raised by the counsel for the appellant that the appellant had discharged his onus while the insurer has failed to properly discharge his onus so as to claim the benefit of getting absolved from the liability to pay the awarded amount.

10. In view of the above discussion, the appeal is allowed. The impugned award to the extent of granting recovery rights to insurer respondent No. 1 to recover the award amount from the appellant, is set aside.