(2016) 01 DEL CK 0045

In the Delhi High Court

Case No : MAC. APP. 82 of 2014

TATA AIG General Insurance Co. Ltd. APPELLANT

Vs

Smt Rekha Sethi & Ors. RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)(a)(ii)

Citation : (2016) 2 ACC 113 : (2017) ACJ 360 : (2016) 3 TAC 44

Hon'ble Judges : R.K. Gauba, J.

Bench : Single Bench

Advocate : B.K. Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gauba, J. (Oral)- This appeal is by the insurer under Section 173 of the Motor Vehicle Act, 1988 (MV Act) impugning the award passed by the motor accident claims tribunal (tribunal) by judgment dated 01.10.2013, mainly to pray for recovery rights against the insured.

2. Ashok Kumar Sethi son of Sunder Dass Sethi died as a result of motor vehicular accident on 31.12.2012 at about 10.50 PM near Captain Gaur Marg, close to Masjid, Modi Flyover Bus Stop, New Delhi, involving a car (make Ford) bearing registration No.DL 3 CAN 2374 (hereinafter "the offending vehicle") giving rise to cause of action for an accident claim petition being preferred under Section 166 of the MV Act by his legal heirs (respondents No.1 to 5 herein) registered as suit No.13/2013. The said respondents No.1 to 5 (hereinafter referred to as "the claimants") impleaded Sachidanand, the driver of the offending vehicle as a respondent (sixth respondent in this appeal), also showing in the array, the registered owner of the offending vehicle Ashok Kumar Ratwani (seventh respondent herein), in addition to the insurer (the appellant herein).

3. During the inquiry before the tribunal whilst the registered owner of the offending vehicle took the plea that the vehicle was duly insured with the

appellant which fact was conceded by the latter which, however, pleaded that there is no liability on its part because the driver (sixth respondent) was not holding a valid driving license at the time of the accident.

4. The claim petition was allowed by the Tribunal by judgment dated 01.10.2013 awarding compensation in the sum of Rs. 15,07,600/- in favour of the claimants, along with suitable directions as to interest and for the awarded amount to be apportioned.

5. On the question of liability of the insurance company, the plea founded on the evidence that the driving license presented by the driver to the investigating police has been found to be fake was rejected primarily on the basis of the evidence of the registered owner of the vehicle, appearing as R2W1, to the effect that he had engaged the driver after securing from him a duly signed bio-data as to his qualification, experience, references and securing a copy of the driving license and also putting him to test as to his driving capability. It is this finding which has been challenged through the appeal at hand.

6. I have heard the learned counsel for the insurance company and for the registered owner at length. I have been taken through the trial court record.

7. The contentions of the appellant were noted by the Tribunal in the impugned judgment in the following words :

"The learned counsel for the R-3/Insurance company has argued that the Insurance Company is not liable to pay any compensation as the driver of the offending vehicle did not have valid and effective driving licence at the time of accident. However, R2W-1, Sh. Ashok Kumar Ratwani has deposed on oath that respondent No.1 was his paid driver who was in his employment from 07.09.2011 and at the time of employing him, R-1 had submitted a duly signed bio-data containing amongst others, his qualification, experience, references and specific mention of his driving licence no.4489/2006 issued on 19.10.2006 by Licencing Authority, Muzzaffarpur valid up to 20.12.2021. R2W-1, Shri Ashok Kumar Ratwani has further averred that he had taken the driving test of R-1 and he was found to be competent and experienced driver and after getting satisfied, he had employed the R-1 as driver."

8. The contention of the insurance company was rejected, with reference to the judgment of the Supreme Court of India in United India Insurance Co. Ltd. v. Lehru and others (2003) 3 SCC 338 with following finding:-

"Since the R-2, owner of the offending vehicle had satisfied himself after taking the driving test of the driver and had also inspected the driving licence of the driver and found the same to be apparently genuine one, basing my decision in terms of the aforesaid judgment of Hon''ble Supreme Court of India in Lehru''s case, I hereby reject the plea of the insurance company for exoneration from liability to pay compensation."

9. The submission of the learned counsel for the appellant essentially is that the

Tribunal has failed to take into account the version of the driver Sachidanand, who appeared as R1W1 and deposed that he had misplaced his driving license in June 2009 and later had obtained another driving license from the transport authority, Nagaland. It is submitted that in the face of such position taken by the driver, the version of the owner, appearing as R2W1, about he having seen the driving license at the time of engaging Sachidanand as driver on the offending vehicle on 06.09.2011 cannot be believed.

10. In the case of United India Insurance Co. Ltd. v. Lehru and others (supra), the Supreme Court ruled as under:

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

11. In the considered opinion of this Court, a contradictory stand taken by the driver cannot render the veracity of the word of the registered owner suspect. It must be noted that in para 8 of his affidavit (Ex.R1W1/A), the driver had also mentioned that his driving license had been traced out in September, 2009. The fact that the police report on record also shows the said driving licence was seized during investigation of the corresponding criminal case adds force to the view that the submission that the registered owner could not have seen the original driving licence cannot be believed.

12. For the foregoing reasons, and in the circumstances, the appeal is found to be devoid of substance and is dismissed.

13. The insurance company submits through the learned counsel that in terms of directions in the order dated 27.01.2014, the entire awarded amount with up-to-date interest had been deposited with the Registrar General of this Court. Out of the said deposited amount, 80% has since been released, the remaining having been kept in the form of fixed deposit receipt with UCO Bank, Delhi High Court

Branch, New Delhi for a period of six months to be renewed periodically. Since the appeal has been dismissed, the balance amount kept in the FDR shall also be released to the claimants in terms of the impugned award. For any further relief for enforcement of judgment/award of the Tribunal, the claimants shall be at liberty to approach the Tribunal.

14. The statutory deposit of Rs.25,000/-, if made, shall be released to the appellant.

