

(2007) 05 PAT CK 0133
In the Patna High Court
Case No : M.A. No. 303 of 2002

The Branch Manager, National Insurance Co. Ltd.	APPELLANT
Vs	
Kameshwar Singh and Others	RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2007) 3 PLJR 314

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This appeal by the Insurance Company is directed against the judgment dated 7.5.2002 passed by the 4th Addl. District Judge cum Motor Accident Claims Tribunal, Saran at Chapra in Claim Case No. 54/1999 whereby and where under the appellant has been directed to pay to the claimants a sum of Rs. 1,37,000/- with interest @ 9% per annum with effect from the date of filing of the claim application till the date of payment. The case of the claimants in nutshell is that on 3.8.1999 Urmila Devi, wife of respondent No. 1 and mother of respondent No. 2 was dashed by Tata 407 bearing registration No. BEV 9417 which was being driven rashly and negligently as a result of which she died. It is also said that the respondent Baban Rai was the owner of the vehicle, respondent Anul Haque was the driver of the Vehicle and the appellant was insurer. The claimant filed an application u/s 166 of the M.V. Act for compensation. The owner and the driver pleaded that the vehicle was insured. The appellant was liable to pay compensation. The appellant in its written statement pleaded, inter alia, that the driver of the vehicle had no valid driving licence on the date of accident and there was breach of condition of policy and so it was not liable to pay compensation.

2. During enquiry an issue was framed as to whether O.P. No. 2 i.e. driver of the offending vehicle had valid licence on the date of accident and whether he was

having a requisite qualification for driving the offending vehicle. The Tribunal after considering the evidence adduced by the parties found that the driver had driving licence for the period from 24.1.1996 to 23.1.1999 and it was renewed for the period from 28.8.1999 to 27.8.2002 and therefore, the driver had no licence on 3.8.1999 when the accident took place. The Tribunal, however, relying on some decisions of other High Courts held that though the driver on the date of accident had no valid licence, he had required qualification for driving the vehicle in question and hence, there has been no breach of insurance policy as provided u/s 149(2) of the M.V. Act. The Tribunal, thus, after deciding the other issues in favour of the claimants held the appellant liable for the compensation and passed the impugned order.

3. Being aggrieved by the above order the appellant filed this appeal. It appears from the Memo of Appeal that besides the question of branch of condition of policy, the appellant has also attached the impugned judgment on the point of quantum of compensation but as there is nothing to show that the appellant had any permission u/s 170 of the M.V. Act, the appeal so far quantum of compensation is not maintainable.

4. So far only question in this appeal for consideration is whether in absence of a valid licence of a driver on the date of accident the appellant could be held liable for compensation.

5. Learned Counsel for the appellant submitted that the impugned judgment is clear that the driver of the offending vehicle was rash and negligent as a result of which the accident occurred and that though the driver had driving licence but the period of licence had expired and he was without any licence on the alleged date of accident, therefore, there has been a violation of condition of the insurance policy by the owner in allowing the driver to drive the vehicle and so the owner is liable to pay compensation. In support of his submission he relied on a decision of three Judges Bench of the Supreme Court in the case of Malla Prakasarao Vs. Malla Janaki and Others, .

6. Learned Counsel for the owner of the vehicle, on the other hand, submitted that in order to avoid liability the insurer must prove wilful violation of law by the insured in respect of the conditions u/s 149(2) or that the insured acted recklessly and negligently with respect thereto, therefore, though the driver had no driving licence on the date of accident and there was a violation of condition of the policy as there is absolutely no evidence to show that the owner knew of this position and still allowed the driver to drive the vehicle, the Insurance Company would be liable to pay compensation on behalf of the insured. In support of his submissions he relied on three Judges Bench decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swarn Singh and Others, .

7. At the outset it may be mentioned that in the case of Swarn Singh & Ors., it has been held that "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 the 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 vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time".

8. So, the question for consideration in this case actually is with regard to the liability of the insurer vis-a-vis insured.

9. Now, in this case admittedly the driving licence of the driver of the offending vehicle had expired and there is no evidence that any application for renewal was made by the driver within a period of 30 days of the expiry of the said licence. It is therefore, evident that the driver was not holding a driving licence on the date of accident.

10. In the case of Malla Prakash Rao (supra) it has been held by the Supreme Court that according to the terms of contract the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle driven by the driver without a driving licence.

11. In the case of Swaran Singh & ors., as stated above, the Supreme Court has held that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time is not in themselves defences available to the insurer.

12. In the case of Swaran Singh the case of Malla Prakash Rao (supra) was also noticed. Therefore, in this case the case of Swarn Singh would be applied. In view of that decision the appellant was required to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy but there appears no evidence of the insured in this regard. So, the appellant has failed, to discharge its burden. Hence, though the driver had no driving licence, the violation was not wilful and therefore, as against the insured the owner also, the appellant has no defence and it has to make payment to the claimant and is not entitled to recover the amount of compensation from the owner to be paid by it.

13. In the result, this appeal is dismissed. The statutory amount deposited by the appellant at the time of filing of this appeal may be withdrawn by the claimants from the Registry as per practice and procedure followed by it in this regard.