(2011) 05 DEL CK 0469

In the Delhi High Court

Case No : Mac. App. 870 of 2006

The New India Assurance Co. Ltd. APPELLANT

Vs

Sri Narain and Others RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8

Citation : (2011) 05 DEL CK 0469

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; None for Respondent Nos. 1 and 3 and Ex parte, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—This appeal seeks to assail the judgment and award of the Motor Accidents Claims Tribunal dated 19th August, 2006 awarding a sum of Rs. 2,18,682/- to the Respondent No. 1 on account of the injury sustained by him in a motor vehicular accident.

2. At the outset, it may be mentioned that notice of the appeal was issued only to the Respondent No. 2-owner confined to the aspect of recovery rights by way of publication. The Respondent No. 2, however, did not choose to contest the appeal despite service of summons upon it and was accordingly proceeded ex-parte by order dated October 19, 2010.

3. The sole submission of Shri Pankaj Seth, the learned Counsel for the Appellant is that the Motor Accidents Claims Tribunal erred in holding the Appellant liable to indemnify the owner of the offending vehicle, namely, the Respondent No. 2 in respect of the entire award amount, even after holding that the Appellant-Insurance Company had proved on record that the licence held by the driver of the offending vehicle (the Respondent No. 3 in the claim petition) at the time of the accident was fake. Mr. Seth in this context contends that the Claims Tribunal

misconstrued the law laid down by the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, as well as in the case of United India Insurance Co. Ltd. v. Lehru and Ors. 2003 ACJ 611 (SC). In the alternative, Mr. Seth contended that the Claims Tribunal ought to have granted liberty in favour of the Appellant to recover the amount of award paid by it to the claimants from the Respondent No. 2.

4. In the present case, as noted by the Claims Tribunal, the Appellant contested the claim petition by filing a detailed written statement and admitted that the offending vehicle was insured by it by a Cover Note No. 534621 and Policy No. 310801/31/98/02274 valid from 05.10.1998 to 04.10.1999, but denied its liability to pay any compensation until it was proved that the driver of the offending vehicle was having a valid and effective driving licence or was not otherwise disqualified from holding the same at the time of the accident. It is also clear from the record that the driving licence of the driver in the instant case was seized by the police by a seizure memo and got verified by the Appellant.

5. In the above context, R1W1 Shri Rama Nand, Assistant, M/s. New India Assurance Co., deposed that the certified copy of the ''Fard'' of D/L (seizure memo of D/L) and driving licence were obtained and the same were verified from the Issuing office, Jaipur. He proved on record the certified copy of the ''Fard'' of the D/L as Ex.R1W1/6 and that of the driving licence as Ex.R1W1/7 and also proved the reply dated 27.07.2005 as submitted by the Licencing Officer, Jaipur in response to the notice sent by the Court as Ex.R1W1/8, submitting therein that no licence was issued in respect of that series.

6. In the aforesaid circumstances, the Claims Tribunal held that R1W1 Shri Rama Nand had proved that the licence of the driver of the offending vehicle was fake. The Claims Tribunal, however, held that the Appellant-Insurance Company had failed to prove breach of the policy conditions on the part of the insured. It held:

Admittedly, notice Under Order 12 Rule 8 CPC Ex. R1W1/2 does not read that R-2 and R-3 had been informed that as per the verification of the D/L of R-3/ driver, certified copy of which is Ex. R1W1/7, as was seized by the police during the course of investigation, received from RTO/Licencing Officer, Jaipur, that R-3 was not having a valid D/L and his licence was fake and R-3 was not authorised to drive the vehicle and this fact was within the knowledge of R-2. No explanation has been placed by R-1/insurance company as to why R-2 and R-3 were not informed of the result of verification of the D/L of R-3 as fake as per the report of the Licencing Officer, Jaipur Ex. R1W1/8. At the cost of repetition no doubt that R-1 has proved that licence of R-3 was fake but R-1 has failed to even show that R-2 had not exercised reasonable care in the matter of fulfilling the conditions of the policy regarding use of offending vehicle by duly licenced driver and that it was within the knowledge of R-2 that the D/L of R-3 was fake.

7. I see no reason to disagree with the Claims Tribunal. Had the Insurance Company summoned the Respondent No. 2-owner into the witness box to prove

its defence that the Respondent No. 2 had not exercised reasonable care in the matter of fulfilling the conditions of the policy regarding use of the offending vehicle by a duly licenced driver, and the Respondent No. 2 had avoided the witness box, in my view, the position might have been somewhat different. But in this case, the Insurance Company chose not to do so. As held by the Supreme Court in the case of Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, the burden to prove breach of the insurance policy was upon the Insurance Company, for,

...the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led....

8. It is not difficult to imagine that had the Respondent No. 2-owner known that the driving licence of his driver was a fake one, he would not have engaged him, for ordinarily no owner would take the risk of engaging a driver without a driving licence or with a fake driving licence. It is also not difficult to imagine that the Respondent No. 2-owner, who was aware of the fact that the driving licence of his driver and the insurance policy got issued by him had been seized by the police, remained under the impression that it was for the insurer to indemnify him for the compensation which the Claims Tribunal might hold to be due and payable from him. It was, therefore, for the Insurance Company to prove that the owner consciously allowed his vehicle to be driven by a person whose driving licence he knew to be fake.

9. In view of the aforesaid, it must be held that the Insurance Company has miserably failed to discharge the burden of proof placed upon it of proving that there was willful default on the part of the Respondent No. 2-owner of the conditions of the insurance policy. Accordingly, the findings of the Claims Tribunal in this regard call for no interference. Consequently, the appeal is dismissed as being without merit.

