(2016) 06 DEL CK 0077

In the Delhi High Court

Case No : MAC.App. 91 of 2008 and CM No. 2263-2264 of 2008

The New India Assurance Company Ltd. APPELLANT

Vs

Satya Narain Sharma RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, Section 166

Citation : (2016) 2 AnWR 629

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

Bench : Single Bench

Advocate : Mr. Pankaj Seth, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Mr. R.K. Gauba, J (Oral) - On 25.07.1998, Hemant Kumar died in a motor vehicular accident on account of negligent driving of a truck bearing registration no.HR-29D-1417 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer). His parents, first and second respondents (claimants) instituted accident claim case (petition no.543/2004, old suit no.1260/1998) on 13.11.1998 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act), impleading besides the insurer, the driver and owner respectively of the offending vehicle (third and fourth respondents herein) as parties. Both the driver and owner (third and fourth respondents) in their written statement denied negligence on the part of the driver.

2. The tribunal held inquiry and, by judgment dated 30.08.2007, upheld the case of the claimants that death had occurred due to negligent driving of the offending vehicle. The said finding has attained finality as it has not been challenged any further.

3. The tribunal awarded compensation in the sum of Rs. 2,90,760/- with interest in favour of the claimants holding the driver and owner jointly and severally

liable. While conceding before the tribunal that the offending vehicle was covered by third party insurance policy, the insurer had taken the plea that the driving licence held by the fourth respondent (driver) was a fake document. It led evidence by examining Yogesh Chand Gupta (R1W1), Senior Assistant and Roshan Lal Chawla (R1W2) and Radhey Shyam Yadav (R1W3), LDC from the Transport Authority. The driving licence relied upon by the third and fourth respondent was brought on record as document (Ex. R1W1/1) which, as per the unchallenged testimony of R1W3, was fake. The tribunal discussed the plea and the contentions of the insurer rejecting it thus :

"..It is submitted by ld counsel for insurance company that R-3 was driving the offending vehicle with a fake license hence, the insurance company is not liable to pay the award amount or in alternative the insurance company be allowed to recover the award amount from the insured.

15. It is proved on record that driving license of R-3 was seized by the police vide memo certified copy of which is Ex. R3W1/5. Meaning thereby that R-3 was having a driving license at the time of accident. It is not that the insured has handed over the vehicle to a person who has not having the driving license.

16. Now the question is, has the insurance company proved that there was wilful breach on the part of insured. It is submitted by ld. Counsel for insurance company that a notice was given to owner of the vehicle under section 12 Rule 8 for production of the insurance policy. The notice was given simply to produce the original insurance policy. It was nowhere mentioned in the policy that the driver engaged by him was having fake license. It was for the insurance company to prove that insured was aware of the fact that the driver engaged by him was having a fake license. The insurance company has not examined the insured to prove any wilful breach on his part. Even the notice u/s 12 Rule 8 was not served on the insured as AD card was never received back.

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18. The insurance company has failed to prove the wilful breach on the part of insured. The fact that DL recovered from the driver itself suggest that insured has handed over the vehicle to a person who was having driving license. It was not his duty to find out from the various transport authorities which has spread through out the country about the genuineness of driving license.."

4. The insurer, which has been burdened with the responsibility to pay the awarded compensation, is in appeal assailing the above view. In spite of notice, third and fourth respondents have not appeared to contest or assist at the hearing.

5. Having heard the counsel for the appellant and having gone through the tribunal''s record, this court finds the view taken by the tribunal to be unsustainable. The insurer had shown by evidence that the document relied upon as a licence by the driver and owner was not genuine and rather a fake

document. In the face of such evidence, the burden had shifted on to the driver and owner to show not only that a valid driving licence exited but also, and more importantly, for the owner to show that he did not have any knowledge about document being fake. Without such evidence having been brought on record, the plea of the insurance company deserves to be accepted.

6. Thus, the appeal is allowed. The contention of the insurance company about breach of the terms and conditions of the insurance policy is upheld. It is granted recovery rights against the owner and driver of the offending vehicle (i.e. the third and fourth respondents).

7. The statutory amount, if deposited, shall be refunded.

8. A copy of this judgment shall be sent by the registry to all the respondents by registered post at their given addresses.

9. The appeal and the pending applications are disposed of in above terms.

