(2012) 12 DEL CK 0308

In the Delhi High Court

Case No : Mac App 239 of 2012

The New India Insurance Company Ltd. APPELLANT

Vs

Surjeet Kumar and Others RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0308

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : K.K. Bhat, for the Appellant; Jitender Saini, with Mr. Tanveer Ahmed, for R-3 and R-4, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant New India Insurance Company Limited seeks recovery rights against the driver and owner of the Tyota Qualis No. DL-7CA-9723 involved in the accident on the ground that the insured committed willful breach of the terms and conditions of the policy as he permitted Respondent No. 3 (Ajay Kumar Gupta) to drive the offending vehicle without a valid driving licence. On inquiry before the Claims Tribunal it was found that the driving licence held by Respondent No. 3 was found to be fake.

2. The quantum of compensation is not challenged by the Appellant Insurance Company.

3. While dealing with the issue of liability, the Claims Tribunal held as under:-

18. The Insurance Company disputed its liability on the ground that driver of offending vehicle was not having a valid and effective licence at the time of accident. Here in this case the owner has appeared into witness box as R2W1 and made statement that driver was employed in month of June, 2008. Before the grant of employment his driving test was taken and hence, in this case there is a person who has personal and direct knowledge of the factum of employment of the driver and the driving test allegedly taken at the time of his employment.

The owner has not been cross examined on this aspect and nothing has been brought to reveal that statement made by this witness has been rebutted by Insurance Company by any cogent evidence. It is settled principle that to avoid liability by Insurance Company towards insured, the insurer has to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licence driver or one who was not disqualified to drive at the relevant time. Here in the instant case, the owner had discharged his obligation under the insurance policy of satisfying himself regarding driving skill of driver and the fact that he is holding a driving licence so in these premises he cannot held guilty of breach of policy. No evidence has been led by the Insurance Company to show that owner was negligent or guilty of willful breach of insurance policy. In this case, R1 is the driver and R2 is the owner. Victim Neeraj Kumar had sustained fatal injuries on account of negligent driving of R1. R3 is insurer of R2, therefore, R3 is liable to indemnify R2 regarding compensation to be payable to the petitioners.

4. It is no longer res integra that the onus is on the Insurance Company to establish that there was a willful and conscious breach of the terms and conditions of the policy. If the insured has taken all precautions to avoid breach of the terms and conditions of the policy, the Insurance Company cannot refuse to indemnify the insured.

5. The Claims Tribunal''s finding is supported by the Supreme Court judgment in United India Insurance Company Ltd. Vs. Lehru and Others, ; and three Judge Bench decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, which was referred to with approval in Lal Chand v. Oriental Insurance Company Limited, 2006 (4) LRC 93 (SC).

6. In the instant case, the owner saw the driving licence and took the driving test of Respondent No. 3 Ajay Kumar Gupta. His testimony remained unchallenged. Thus, the Appellant Insurance Company cannot complain of the breach of the terms and conditions of the policy.

7. The Appeal is devoid of any merit; the same is accordingly dismissed.

8. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.