(2008) 03 DEL CK 0202

In the Delhi High Court

Case No : MAC APP No. 578 of 2005

United India Insurance Co. Ltd. — APPELLANT

Vs

Shri Vijay Kumar Gupta and Others — RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Citation : (2008) ILR Delhi 98 Supp : (2008) ILR Delhi 42 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : P.R. Sikka and V.K. Gupta, for the Appellant; None, for the Respondent

Judgement

Kailash Gambhir, J.—By way of the present appeal the appellant seeks to challenge the impugned Award dated 19.04.2005 only on the limited ground that the appellant insurance company has not been given recovery rights although the appellant had duly proved and established on record that the driver of the offending vehicle Mr. Pale Ram was not holding any driving licence as on the date of the accident. Brief summary of the facts of the case are as follows:

On 9.12.2003 respondent No. 1 Shri Vijay Kumar Gupta was driving his motor cycle bearing registration No. DL-4S-AE-2655 and was proceeding towards his residence at Mallk Pur at about 1.30 p.m. when he reached near Ghevra Morh, Rohtak road and his motor cycle was standing there, one Tata 207 bearing registration No. HR-468-1344 driven by one Mr. Pale Ram at high speed and in rash and negligent manner, hit his motor cycle. As a result of this accident he fell down and received grievous injuries.

2. Nobody has chosen to appear for respondents No. 2 and 3. For the last many dates nobody appeared for respondents No. 2 and 3. Counsel appearing for the appellant has invited my attention to para 16 of the impugned Award wherein reference has been made to the cross-examination of Mr. Pale Ram, who in his cross-examination had stated that he was not holding any valid driving licence at

the time of the accident. The contention of the Counsel for the appellant is that Mr. Pale Ram was a cleaner under the employment of one Mr. Vinod Kumar. Counsel for the appellant thus submitted that since admittedly Shri Pale Ram was driving the offending vehicle and who in his cross-examination has admitted the fact that he was not in possession of any driving licence, therefore, the appellant is entitled to recover the Award amount from the owner of the offending vehicle. In support of his submission Counsel for the appellant has placed reliance on United India Insurance Co. Ltd. Vs. Gian Chand and others, and Sohan Lal Passi Vs. P. Sesh Reddy and others,

3. I have heard Learned Counsel for the appellant and have perused the record.

4. Perusal of the record shows that claimants/respondents in their claim petition as well as in the evidence have attributed the said accident solely due to the rash and negligent driving of Mr. Pale Ram. Mr. Vinod Kumar, who was the owner of the offending vehicle also in his deposition has stated that Mr. Pale Ram was the cleaner while one Mr. Sumer Singh was the driver. It is not in dispute that Mr. Pale Ram was driving the offending Tata tempo bearing registration No. HR-46B-1344 in a most rash and negligent manner and due to the same the claimant sustained injuries. The Tribunal after placing reliance on the judgment of the Apex court reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, has reached to the conclusion that the insurance company has failed to discharge its obligation by leading any positive evidence so as to establish breach on the part of the insured to the terms and conditions of the policy. The Tribunal further held that it was for the insurance company to have summoned the record from the office of the RTO to establish that Mr. Pale Ram was not holding any driving licence. The Tribunal thus found that the insurance company failed to discharge its obligation and thus was held liable to indemnify the insured without recovering Award amount from the insured/owner of the offending vehicle. It is no doubt true that the insurance company has to establish by leading a positive evidence that there was a kind of willful breach on the part of the insured to the terms and conditions of the policy, but I fail to comprehend a situation where the driver himself in his cross-examination has disclosed that on the relevant date of accident he was not holding any driving licence still the insurer has to discharge such obligation. The finding of the Tribunal appears to be perverse and not justified. Once the driver himself has admitted that he was not holding any driving licence as on the relevant date of accident, then, at least the insurer is entitled to claim recovery rights of the Award amount from the owner of the offending vehicle. There is no opposition from the side of the owner and driver of the offending vehicle to the pleas raised by the Counsel for the appellant and in the backdrop of the aforesaid discussion, I allow the present appeal and grant recovery rights to the appellant insurance company, to recover the entire Award amount along with upto date interest from the insured. This is subject to the condition that the appellant insurance company has already paid the Award amount in favour of the claimants in terms of the Award.

5. Let the statutory deposit of Rs. 25,000/-, deposited by the appellant insurance company prior to filing of the appeal with Registrar (General) of this Court be released in favour of the appellant insurance company.

6. With these directions the appeal stands disposed of.

