
(2013) 04 DEL CK 0420
In the Delhi High Court
Case No : Mac. App. 188 of 2012

United India Insurance Co. Ltd.		APPELLANT
	Vs	
Tara Chand and Others		RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

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

Citation : (2013) 2 ACC 745

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajesh Dwivedi and Mr. A.K. De, for the Appellant; Dhruv Kumar, for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the award dated 25.11.2011, whereby the learned. Tribunal has directed the appellant to pay the compensation amount in favour of the respondent No. 1/claimant. Id. Counsel appearing on behalf of the appellant has argued that their Senior Investigator had filed the Verification Report of the driving licence which was issued by the Licensing Authority, Bulandshahar vide no. T-4634. As per the said Report, the licence was not issued in the name of Sh. Saleem, S/o, Sh. Gulla (respondent no. 2 herein), however, the same was issued to Sh. Santraj, S/o, Sh. Kishorilal.

2. Despite the said Verification Report, Id. Tribunal has not given any recovery right as the respondent/owner breached the terms of the policy. Moreover R3W1, who appeared from ARTO, Bulandshahar stated on Form 54 R3W1B that respondent no. 2 herein was driving the vehicle by using the fake license. Id. Tribunal has not considered the said fact also.

3. On the other hand, Id. Counsel for the respondent nos. 2 & 3, driver and owner respectively has submitted that the appellant had stated in reply to the Claim Petition that, "Para 23 of the Claim Petition is wrong and denied. The

petitioner has made wrong allegations only with a motive to claim higher amount. The vehicle allegedly involved in this accident was not at all involved in the accident. The petitioner had fallen from his own scooter and hit the pavement. The petitioner is trying to claim compensation on false and frivolous grounds. The vehicle allegedly involved in the accident has been driven properly by the respondent no. 1 always, who was following proper rules and regulations as per traffic norms. No liability can be fastened upon respondent no. 3 in the above-mentioned facts. The amount of Rs. 8 Lac claimed in this petition is also highly exaggerated and without basis and this petition should be dismissed outrightly. Also the petitioner is not entitled to any kind of interest on the amount claimed. The petitioner has also not spent any amount on special diet nor has he suffered any loss of income due to his accident."

4. Moreover in preliminary objections of the reply to the claim petition, they stated as under:

That the vehicle in question is not involved in the accident as alleged by the claimant. The report dated 7.12.2003 states that the petitioner had fallen down from his scooter and struck his head on the pavement, therefore, no claim against the alleged vehicle can be passed.

5. Id. Counsel further submits that in view of the reply and written statement of the appellant, Id. Tribunal had relied upon case of Lal Chand v. Oriental Insurance Co. Ltd. 2006 (3) TAC-321 SC, wherein it is held that the Insurance Company has to show and prove on record that adequate care was not taken by the owner or had the knowledge that driver was not holding a valid licence. Only in that eventuality, the Insurance Company can be absolved of its contractual obligation, not otherwise.

6. On the testimony of R3W1, Id. Tribunal has observed that offending vehicle was insured with the appellant. Although the appellant has placed the report of the Investigator R3W1/A and the ARTO, Bulandshahar on form 54 R3W1/B stated that the driver was driving the offending vehicle using the fake license, however, opined that there is nothing on record to indicate that the appellant at any stage of the proceedings had issued notice U/o. XII Rule 8 CPC to the driver/owner to produce a valid and effective license.

7. In view of the above, Id. Tribunal has come to the conclusion that it was incumbent upon the Insurance Company to inform the insured after getting the investigation report that he or his driver did not have a valid and effective license in order to absolve it from its liability, which was not done in the present case. Moreover, Id. Counsel for the appellant has argued before the Id. Tribunal that it was a case of contributory negligence.

8. Respondent/claimant PW1 stated that on 07.12.2003 when he was going from his residence to Dakshin Puri on his Scooter, near MCD Office at MB Road, a TATA 407, DL-1LA-5283 came from the side of Khanpur, being driven by respondent no. 2 rashly and negligently at high speed hit his scooter, as a result of which he

sustained fractures in the orbit of right eye and other injuries. He placed on record the certified copy of charge sheet Ex. PW1/1 to PW1/9.

9. On perusal of the same, Id. Tribunal found that case was registered on the statement of Tara Chand, who had specifically stated that TATA 407 was being driven by its driver at a fast speed and in rash and negligent manner, who after causing the accident fled away from the spot.

10. Id. Tribunal has further recorded that testimony of PW1 on aspect of rash and negligent driving remained unrebutted on record. From RC collected during investigation, Id. Tribunal found that R3 was the owner of offending TATA 407. Moreover, who did the mechanical inspection found fresh damages on both the vehicles. Id. Tribunal on the basis of that found no force in the arguments of the appellant and recorded that the plea of contributory negligence in defence to a motor accident claim is not entertained unless it is specifically stated in the written statement giving full details concerning the acts.

11. In the instant case, there was no specific argument as to how and in what manner the respondent no. 1 had contributed the accident.

12. Law is settled in case of National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, , wherein it is held that petitioner files the certified copy of the criminal record showing completion of investigation, issuance of charge-sheet, certified copy of the FIR and all these documents are sufficient proof to come to the conclusion that the driver was negligent.

13. I have heard the learned counsel for the parties.

14. The main ground argued by the learned counsel for the appellant/Insurance Company is that despite verification report filed by their Senior Investigator that the driving licence in question was not issued in the name of Sh. Saleem, i.e., the driver of the offending vehicle, the learned Tribunal has not given any recovery rights as the respondent/owner breached the terms of the policy.

15. The law has been settled in the case of Lal Chand (supra) that in case adequate care was not taken by the owner or having knowledge that the driver was not holding a valid licence, only in that eventuality, the Insurance Company can be absolved from its contributory obligation.

16. The appellant/Insurance Company has not proved at any stage of proceedings that they had issued a notice under Order XII Rule 8 CPC to the driver/owner to produce a valid and effective licence. It was incumbent upon the Insurance Company to inform the insured after getting the investigation report that he or his driver did not have a valid and effective licence in order to absolve it from its liability. They failed to do so in the present case.

17. After going through the record, it is emerged that the appellant's main thrust was to prove contributory negligence and alternatively this issue has been argued before this Court.

18. PW1/claimant stated that when he was going from his residence to Dakshinpuri on his scooter, near MCD Office at MB Road, a TATA 407, DL-1LA-5283 came from the side of Khanpur, being driven by respondent No. 2 rashly and negligently at high speed, hit his scooter, as a result of which he sustained fractures in the orbit of right eye and other injuries. The testimony of the said witness on the aspect of rash and negligent driving remained unrebutted on record. It is proved on record that R3 was the owner of the offending vehicle TATA 407. Moreover, it is proved from the mechanical inspection that there were fresh damages on both the vehicles.

19. The appellant neither had taken any ground in the written statement regarding contributory negligence nor produced any witness to prove the same, therefore, I do not find any force in the submission made on this issue.

20. On the issue of fake licence, neither the appellant could prove before the Trial Court that the owner of the offending vehicle did not take due care whether the licence was genuine or fake nor led any additional evidence regarding the same even at the appellate stage, therefore, I am of the considered view that the recovery rights cannot be given against the owner of the vehicle.

21. In view of the above discussion, I do not find any discrepancy in the judgment dated 25.11.2011 passed by the learned Tribunal, therefore, I am not inclined to interfere with the same. Consequently, the present appeal is dismissed with no order as to costs.