(2017) 02 JH CK 0220

In the Jharkhand High Court

Case No : 505 of 2014

United India Insurance Co. Ltd. APPELLANT

Vs

Tara Devi, & Ors. RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 147, Section 147, Section 140, Section 140, Section 149(2), <a href=15711-149>Section 149(2)<

Citation : (2017) 02 JH CK 0220

Hon'ble Judges : Amitav K. Gupta

Bench : SINGLE BENCH

Advocate : Basav Chaterjee, Achinto Sen, Suman Kr. Ghosh

Judgement

1. This appeal has been preferred against the award, dated 28.02.2014, in Claim Case No. 16 of 2009, passed by the District Judge, II cum Motor Vehicle Accident Claim Tribunal (for short MACT), Koderma, directing the appellant/ National Insurance Co. Ltd., to pay the compensation amount of Rs.3,85,000/- with interest @ 6% from the date of filing of the claim petition.

2. Learned counsel for the appellant has assailed the impugned order contending that the driver of the offending vehicle did not have a valid driving license. That the Tribunal has discussed the issue regarding the validity of the license in para -10 of the impugned judgment and award as follows:- "10. Issue No.5:- Since O.P. No.2 and 3 have appeared and have filed their W.S in which they have specifically stated that the driver of the offending vehicle was having valid and effective driving licence bearing no.1422/99 Koderma Previous D/L No.215/93, Ranchi and was valid up to 15.3.12 to this effect. A certificate vide memo no.357 dated 16.3.10 has been issued by the D.T.O., Koderma which is annexed alongwith the written statement. I have gone through Ext.A which is certificate of driving licence of Sanjay Singh and the entries mentioned in the certificate itself is totally in accordance with the statement in para-2 of the W.S filed on behalf of

O.P. No.2 & 3. It also transpires that the O.P. No.1 National Insurance Co.Ltd has also filed certain documents which has been marked as Ext.B & C. They are letter of Deputy Manager National Insurance Co.Ltd. Ranchi to the Branch Manager national Insurance Co.Ltd. Koderma marked as Ext.B & Ext.C is the investigation report submitted by one Sunil Kumar. Although, the learned counsel for the O.P.No.1 has submitted that the earlier D/L issued by the D.T.O. Ranchi in the year 1993 in favour of Sanjay Singh was false and fabricated but unfortunately O.P. No.1 has not produced any certificate with regard to forge and fabricated D/L earlier issued to Sanjay Singh, driver of the offending vehicle from Ranchi in the year 1993.

Since Ext.A has been issued by the DTO, Koderma by which the D/L of the driver of the offending vehicle appears to be genuine one. Hence, this Tribunal find and holds that this issue is accordingly decided in favour of O.P.No.2 & 3 and against the O.P. No.1".

It is urged that the Supreme Court in the case of National Insurance Company Ltd. Vs. Laxmi Narayan Dhut, reported in 2007 (2) MAC 965 SC, has held in para- 36 as follows :-

"36. The inevitable conclusion therefore is that the decision in Swaran Singh''s case (supra) has no application to own damage cases. The effect of fake licence has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla v. Kamla and Ors., 2001 (4) S.C.C. 342 Once the licence is fake one the renewal cannot take away the effect of fake licence. It was observed in Kamla''s case (supra) as follows :

12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit striped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry" No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine."

It is contended that it is evident from para -10 of the impugned judgment that the appellant/ Insurance Company (O.P. No.1 in the court below) had produced the letter of the investigator and the report which are Ext. B and Ext. C respectively, wherein it has been categorically mentioned that the D/L of the driver of the offending vehicle namely, Sanjay Singh, was not issued by the D.T.O. Ranchi. Thus, in the given circumstances the renewal of such fake licence by the D.T.O. Koderma, cannot transform the fake licence to be genuine in view of the decision of the Supreme Court in the case of National Insurance Company Ltd., (Supra).

On the above ground, it is argued that the Tribunal has failed to appreciate that there has been blatant violation of terms and conditions of the policy, hence, the Tribunal has erred in fastening the liability to pay the compensation on the

Insurance Company. That in the given factual situation while fastening the liability on the Insurer the Tribunal should have given the liberty, to the Insurance Company, to recover the compensation amount from the owners of the offending vehicle.

3. On perusal of the record it is manifest that, in the present appeal, despite valid service of notice, the owners have not appeared before this Court. Learned counsel on behalf of the respondent/ claimants has submitted that till date not a single farthing of the compensation amount has been paid to the claimants, save and except the interim compensation under Section 140 of the Motor Vehicle Act, 1988.

4. Heard. The established principle is that when there is breach of contract in terms of Section 149(2) of the Motor Vehicle Act, the insurer can take remedial step against the insured and the contract cannot override the statutory liability to pay the compensation to the third party under Section 147 of the Motor Vehicle Act. On perusal of the impugned award it is apparent that the Tribunal in para-10 of the impugned judgment, has not given any conclusive finding regarding the genuineness of the driving licence rather it has expressed "D/L of the driver of the offending vehicle appears to be genuine one". This is suggestive of the fact that the Tribunal was not certain about the genuinity of the driving licence. Admittedly the onus was upon the appellant/ Insurance Company to adduce clinching evidence to substantiate its plea that the D/L of the driver of the offending vehicle was fake. The Insurance Company has relied on the enquiry report submitted by the Investigator. The insurer could have filed an application to call for the report from D.T.O., Ranchi and examined the Investigator which it failed to do accordingly the Tribunal has expressed its opinion that D/L appears to be genuine.

At this juncture, learned counsel submits that an opportunity be given to the appellant/ Insurer to adduce evidence on this aspect in Claim Case No.16 of 2009 before the Tribunal. It is evident from the record as stated above that the respondents-owners have not appeared despite valid service of notice hence in the interest of justice it would be proper to remit the matter to the court below with liberty to the appellant/ Insurer to adduce evidence on the issue of validity and genuineness of D/L No.215/93 issued by D.T.O. Ranchi.The court below shall after noticing the owners of the vehicle pass necessary order in the matter on merit on the basis of the evidence adduced by the parties without being prejudiced by any observations or discussions made here-inabove. It is made clear that the court has not expressed any view on merit on this issue.

The National Insurance Company Limited shall deposit the awarded compensation amount with interest @ 7% from the date of the claim application in the court below within two weeks from the date of receipt of copy of this order and the court below shall disburse the amount in favour of the respondents/ claimants on the terms and conditions which it deems fit and proper to impose.

5. With the above direction, the impugned award is modified to the extent as indicated above and the matter is remitted to the court below for adjudication on the limited issue as discussed in the foregoing paragraphs.

6. Registry is directed to refund the deposited statutory amount in favour of the appellant/ National Insurance Company Limited.