(2014) 11 SHI CK 0133

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (MVA) No. 383 of 2007

United India Insurance Company Ltd. APPELLANT

Vs

Akash Babu and Others RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : (2015) 1 ShimLC 403

Hon'ble Judges : Mansoor Ahmad Mir, C.J.

Bench : Single Bench

Advocate : Ashwani K. Sharma, Advocate, for the Appellant; Onkar Jairath, for the Respondent

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J.?Challenge in this appeal is to the judgment and award dated 30.6.2007, made by the Motor Accident Claims Tribunal, Una in MAC petition No. 3 of 2005, titled Akash Babu v. Raj Kumar and others, whereby a sum of Rs. 1,50,000/- came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal. The claimant, driver and owner have not questioned the impugned award on any ground, thus, it has attained finality so far as it relates to them.

2. The insurer has questioned the impugned award on the ground that the Tribunal has fallen in error in saddling the insurer with the liability.

3. The learned Counsel or the insurer/appellant argued that the driver was having a fake driving licence but stands renewed. There is evidence on the file that driving licence was renewed by Licencing Authority from time to time, as such it cannot be said that the owner has committed any willful breach. It was for the insurer to plead and prove that the insured has committed willful breach which the insurer has failed to prove. My this view is fortified by the Apex Court judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and

Others, . It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

"105 ....

(i) ....

(ii) ....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v) ....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act."

4. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of Pepsu Road Transport Corporation v. National Insurance Company, reported in (2013) 10 Supreme Court Cases 217 hereinbelow:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

5. The impugned award is very meager, I wonder why the insurer has filed the appeal.

6. Having said so,'' the appeal is dismissed and the impugned award is upheld. The amount deposited in the Registry be released in favour of the claimant, after proper verification, through payee''s cheque account. Accordingly, the appeal stands disposed of alongwith pending applications. Send down the record, forthwith.

