United India Insurance Co. Ltd.

Vs

Gian Chand

(S.B.Majmudar, B.N.Kirpal JJ)

02.09.1997

JUDGMENT

S.B.MAJMUDAR.J.

1. Leave granted

2. At the SLP stage itself, by order dated 25th March, 1997, this court had directed as under:

> "Delay condoned. Issue Notice for final disposal of the SLP in the light of decision of this Court in New India Assurance Co. Ltd. Vs. Manner Madhav Tambe & Ors. (1996) 2 SCC 328. Notice on application for stay wherein there shall be ad-interim stay of the order of the High Court as against the petitioner. Insurance Co. only, till further orders."

3. Pursuant to the notice for final disposal issued in SLP, respondent Nos. 1 and 9 who are duly served,have not thought it fit to appear and contest these proceedings. The contest now, therefore, survives between the appellant-Insurance Company on the one hand and the claimants who are represented by learned counsel Mr. H.K.Puri. Having heard learned counsel for contesting parties. We are disposing of this appeal finally by this judgment

4. A few facts leading to this appeal may be stated at the outset. A car which was insured by respondent No. 9 - original owner, with the appellant-Insurance Company against third party risk, met with an accident on 1st January, 1988, at about 10.30 a.m. In the said accident, the deceased, who was going on a scooter, got fatally injured. The contesting respondents are the claimants, being dependents of deceased. They filed a claim for compensation before the Motor Accident claims Tribunal II, Una, in the State of Himachal Pradesh. The contention of the respondents-claimants was that the vehicle was driven by the driver, respondent No. 1 herein. In a rash and negligent manner and because of such driving the fatal accident occurred to their bread winner. The defence of the owner of the Vehicle, viz., respondent No.9 was that he had already sold and handed over this vehicle to respondent No.1 and therefore, he had nothing to do with this claim. Respondent No. 1, on the other hand, submitted before the Tribunal by filing his written statement and also by entering into witness box, that he had nothing to do with the vehicle. He neither purchased it nor had he driven the same. However, he stated that he had no licence to drive the vehicle at the relevant time when the accident occurred. So far as respondent No. 9, who is insured, was concerned, he did not think it fit to enter the witness box. The defence of the appellant- Insurance Company was that whatever may be the liability of respondent Nos. 1 and 9 regarding the claim for compensation, so far as the appellant-Insurance Company is concerned, it stood exonerated by the exclusion clause is

the Insurance Policy which did not permit the insured to hand over the vehicle for purpose of driving to an unlicensed driver. The Tribunal after recording evidence came to the conclusion that the accident was caused due to rash and negligent driving of the car by respondent No.1, who was on the wheel at the relevant time. It did not believe the case of respondent No.9 that he had sold and handed over the vehicle to respondent No.1 and had nothing to do with the vehicle. This finding was reached especially in view of the fact that respondent No. 9 did not think it fit to come to the witness box to support his case. Consequently the claim for compensation was computed and was made payable by respondent Nos. 1 and 9. However, so far as the Insurance Company was concerned, the Tribunal took the view that the appellant-Insurance Company got exonerated from its liability on account of the fact that respondent No.9 the insured, had permitted the vehicle to be driven by an unlicensed driver, viz., respondent No.1 and therefore, he had committed breach of the relevant term of the Policy and that entitled the Insurance Company to get the benefit of the exclusion clause available as a defence to the Company under Section 96 (2) (b) of the Motor Vehicle Act, 1939. In the result, the Tribunal while awarding Rs.58,400/- as compensation, in favour of the respondents-claimants, against respondent No.1 and the present respondent No.9, who was respondent No.2 before the Tribunal, exonerated the appellant-Insurance Company from its liability to meet the claim amount awarded in favour of the claimants.

5. That resulted into an appeal before the High Court by respondent No.1, the driver of the vehicle. In that appeal it was contended by him, amongst others, that the Insurance Company should have been liable to meet the claim and was wrongly exonerated by the Tribunal. That contention of respondent No.1 was accepted by the High Court in appeal, though on other contention on merits the appeal was held to be liable to be dismissed. It was only partly allowed to the extent that the appellant-Insurance Company was held liable jointly and severally to pay along with the insured and the driver the amount of compensation to the claimants. For coming to the said conclusion against the appellant-Insurance Company, the High Court placed strong reliance on a decision of a Bench of two learned Judges of this Court in Skandia Insurance Company Ltd. Vs. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654).

6. The aforesaid decision of the High Court is on the anvil of scrutiny before us in the present appeal.

7. In support of the appeal, learned counsel for the appellant-Insurance Company submitted that the High Court had committed a patent error of law in passing the impugned order against the Insurance Company. For his submission he placed reliance on two decisions of this Court in New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe & Ors. 1996 (2) SCC 328 as well as on an earlier decision of this Court in Kashiram Yadav & Anr. Vs. Oriental Fire & Insurance Co. & Ors. 1989 (4) SCC 128, while Mr. Puri, learned counsel appearing for the contesting respondent-claimants pitched his faith strongly on the earlier decision of this Court in 1987 (2) SCC supra as well as a latter decision of a Bench of three learned Judges of this Court in Sohanlal Passi Vs. P. Sesh. Reddy & Ors. 1996 SCC 21.

8. In order to resolve this controversy between the parties. It must be observed at the outset that the aforesaid decisions clearly indicate two distinct lines of cases. The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of Insurance Policy, which required them not to permit the vehicle to be driven by unlicensed driver. Such a breach is held to be a valid defence for the Insurance Company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accidents which may injure them personally or which may deprive them of their bread winner on account of such accidents caused by

the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that caused such accidents wherein the insured owners of the vehicles do not themselves commit breach of any such condition and hand over the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, hand over vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the insurance company cannot get benefit of the exclusionary clause and will remain liable to meet the claims of third parties for accidental injuries. Whether fatal or otherwise. The decisions of this Court in Skandia Insurance Co. (supra) and in Sohan Lal Passi (supra) represent this second line of cases while the decisions of this Court in New India Assurance Co. (supra) and in Kashiram Yadav (supra) represent the first lines of cases.

9. In the case of Skandia Insurance co. Ltd. Vs. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654 (supra), a Bench of two learned Judges of this Court speaking through Thakkar, J. held that when the insured had handed over vehicle to be driven by licensed driver and even if the licensed driver on his own and because of his negligence had allowed an unlicensed cleaner to driver the vehicle it could not be said that there was any breach committed by the insured, so as to attract the exclusion clause in favour of the Insurance Company as contemplated under Section 96 (2) (b) of the Motor Vehicles Act, 1939. In paragraph 14 of the Report it was observed that:

> "That word 'breach' in the expression "breach of a specified condition of the policy" in Section 96(2) (b) is of great significance, 'Breach' means infringement or violation of a promise or obligations. This induces an inference that the violation or infringement on the part of the promisor must be wilful infringement or the violation, sub-clause (ii) of clause (b) of Section 98 (2) enjoins the insurer to establish that the breach was on the part of the insured and that it was the insured who was quality of violating the promises or infringement of the contract. It is only when the insured himself place the vehicle it charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licence driver. The insurer cannot escape from the obligation to indemnify the insured when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of the licensed driver, with the express or implied mandate to driver himself, it cannot be said that the insured is guailty of any breach. In a way the question is as to whether the promise made by the insured is an absolute promise or whether he is exculpated on the basis of some legal doctrine".

10. We fail to appreciate how the aforesaid decision can be of any avail to learned counsel for the respondents-claimants on the peculiar facts of the present case. It has been clearly held by the Tribunal as well as by the High Court that respondent No.1 who was permitted to drive the vehicle by respondent No.9, the insured, was admittedly not having any driving licence. It was not the case of respondent No.9, the insured, that he did not know that respondent No.1 whom the vehicle was being handed over was not having a valid licence. In fact, once he did not step in the witness box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, respondent No. 1. That finding reached by the Tribunal as well as the High Court must result in exonerating the Insurance Company of its obligation as the statutory defence became available to it. The High Court, even though agreeing with the finding of fact reached by the Tribunal, has in our view, by misconstruing the ratio of the decision of this Court in Skandia Insurance Co. Ltd. Vs. Kokilaben

Chandravadan & Ors. (1987 (2) SCC 654), (supra), erroneously held that the said defence was not available to the Insurance Company on the facts of the present case. Even that apart, a Bench of three learned judges of this Court in 1966 (5) SCC 21 (supra) while upholding the ratio of the decision of this Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654) (supra) has also taken the same view.

11. Even apart from these judgments, which do not improve the case of the respondent, strong reliance was placed on two other judgments of this Court by the learned counsel for the appellant. As noted earlier they represent the first line of cases. In Kashiram Yadav & Anr. Vs. Oriental Fire & General Insurance Co. & Ors. (1989 (4) SCC 128), a bench of two learned judges of this Court, speaking through Jagannatha Shetty, J. distinguished the decision in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654) (supra) and took the view that when the insured had handed over the vehicle to an unlicensed driver. The Insurance Company would get exonerated and the ratio of the decision of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654) (supra), would be of no assistance to the claimants in such a cases. The fact situation in the present case is almost parallel to the fact situation which was examined by this Court in Kashi Ram Yadav Vs. Oriental Fire & General Insurance Co. & Ors. (1989 (4) SCC 128 (supra). There is also a latter decision of this Court in New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe & Ors. 1996 (2) SCC 328, wherein a Bench of two learned judges of this Court, to which one of us, B.N.Kripal, J. was a party, examined a similar fact situation and came to the conclusion that "the exclusion clause in the Insurance Policy makes it clear that the Insurance Company, in the event of an accident, would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The use of the words "permanent driving licence" in the insurance policy was to emphasis that a temporary or a learner's licence-holder would not be covered by the insurance policy."

12. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver. The Insurance Company would get exonerated from its liability to meet the claims of third party who might have suffered on account of vehicular accident caused by such unlicensed driver. In view of the aforesaid two sets of decisions of this Court, which deal with different fact situation, it cannot be said that the decisions rendered by this Court in Skadia Insurance Co. Ltd. Kokilaben Chandravadan & Ors. (1987 (2) SCC 654) (supra) and the decision of the Bench of 3 learned Judges in 1996 (5) SCC 21 (supra) in any way conflict with the decisions rendered by this Court in the cases of New India Assurance Company Ltd. Vs. Mandar Madhav Tambe & Ors. 1996 (2) SCC (supra) and Kashiram Yadav & Anr. Vs. Oriental Fire & General Insurance Co. & Anr. 1989 (4) SCC 128.

13. In the result, therefore, this appeal is allowed. The decision of the High Court under appeal to the extent it refused to exonerate the Insurance Company will stand set aside and it is held that the Appellant-Insurance Company is not liable to meet the claim of the respondent claimants. The claim petition will stand rejected against Appellant-Insurance Company. The respondent-claimant will however be entitled to recover the awarded amount of compensation from respondent Nos. 1 and 9.

14. As there was already a stay in favour of the appellant pending these proceedings and consequently claimants have not been paid any amount by the appellant, no further question arises in so far as the claim of the Insurance Company in the present appeal is concerned.