SUPREME COURT OF INDIA

Premkumari

Vs.

Prahlad Dev

C.A.No.490 of 2008

(Arijit Pasayat and P. Sathasivam JJ.)

18.01.2008

JUDGMENT

P. Sathasivam, J.

1) Leave granted.

2) Whether the Tribunal was right in holding that the insurer was not liable as the driver had a fake license is the question to be decided in this appeal?

3) Background Facts:

> "One Ramdhan, who was husband of appellant No.1 and father of appellant Nos. 2 and 3 who were minor children, died in a motor vehicle accident while he was going on his bicycle and hit by a truck bearing Registration No. CPW 7344 which was being driven in a rash and negligent manner by respondent No.2 herein, owned by respondent No.1 herein and was insured by respondent No.3 herein National Insurance Company. According to the appellants/claimants at the time of accident, the deceased was aged about 36 years and working as a carpenter and he was getting an income of Rs.125/- to Rs.150/- per day. The claimants filed claim case No. 154 of 1997 before the Motor Accident Claims Tribunal, Indore claiming a total compensation of Rs. 7 lacs under Sections 166A and 140 of the Motor Vehicles Act, 1988. Respondent No.3 filed a written statement denying the claim and also pleaded that the driver of the offending vehicle did not have a valid and effective driving license on the date of the accident. The Tribunal based on the materials placed and the evidence on record found that death was caused due to rash and negligent driving of respondent No.2. On 08.02.2000, the Tribunal awarded compensation of Rs.2, 56,000/- to the appellants along with interest @ 9% p.a. from the date of filing of the claim application. The respondent No.3-Insurance Company was exonerated from its

liability to pay compensation on the ground that the driver of the offending vehicle did not have a valid and effective driving license on the date of accident."

4. Aggrieved by the award of the Tribunal, the claimants filed Misc. Appeal No. 1665/2002 in the High Court of Madhya Pradesh, Bench at Indore challenging the quantum of the award as well as exoneration of respondent No.3-Insurance Company from its liability of making payment of compensation to them. The High Court, considering the merits of the case and finding that duplicate license was issued to respondent No.2 who is not having a valid and effective license on the date of the accident, held that Insurance Company was not liable for the compensation amount as determined. However, considering the merits of the case, age and income of the deceased and dependents being wife and minor children enhanced the compensation amount to Rs.3,50,000/- and directed respondent Nos. 1 and 2 i.e. owner and driver of the vehicle to pay the same. The review petition filed by the appellants in Misc. Civil Case No. 41 of 2004 exonerating respondent No.3 from its liability has been dismissed by the High Court by order dated 22.04.2004. Questioning those orders, the claimants filed the present appeal after obtaining leave.

5.Heard Mr. Vikrant Singh Bais, learned counsel for the appellants and Ms. Manjeet Chawla, learned counsel for the 3rd respondent and none appeared for respondent Nos. 1 and 2 perused the materials placed before us and the annexures filed.

6. In this appeal, the appellants mainly concerned about the orders of the Tribunal and the High Court exonerating the Insurance Company from its liability. Before considering the relevant decisions of this Court and the issue in question, let us note certain factual details. The first respondent is the owner of the offending vehicle and respondent No.2 is the driver of the said vehicle, who is none other than the brother of the first respondent. Before the Tribunal, the Insurance Company contended that the driver was not having a valid and effective driving licence. Considering the materials in the form of oral and documentary evidence placed by the Insurance Company the Tribunal found that opposite party No.2, namely, driver of the offending vehicle did not have a valid and effective licence on the date of the accident. Based on the said conclusion, it exonerated the Insurance Company from its liability. When this specific finding was challenged by way of review application before the High Court, the judgment of this *Court in United India Insurance Co. Ltd. vs. Lehru and Others*[1] was pressed into service. In the said judgment, after considering Section 96(2)(b)(ii) of the old Motor Vehicles Act and similar provision i.e. 149(2)(a)(ii) in the Motor Vehicles Act, 1988, this Court held as under:-

"(a) Thus under sub-section (1) the insurance company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become "entitled to avoid or cancel or may have avoided or cancelled the policy". The words "subject to the provisions of this section" mean that the insurance company can get out of the liability only on grounds set out in Section 149. Sub-section (7), which have been relied on, does not state anything more or give any higher right to the insurance company. On

the contrary, the wording of sub-section (7) viz. "no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability" indicates that the legislature wanted to clearly indicate that insurance companies must pay unless they are absolved of liability on a ground specified in sub-section (2). This is further clear from sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance, would be of no effect if they are not of the nature specified in sub-section (2). The proviso to sub-section (4) is very illustrative. It shows that the insurance company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the insurance company to pay is further emphasized by sub-section (5). This also shows that the insurance company must first pay, then it can recover. If Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the insurance company. On the contrary it is emphasizing that the insurance company cannot avoid liability except on the limited grounds set out in sub-section (2). 18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2) (a) (ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia (1987) 2 SCC 654 and Sohan Lal Passi*[2] cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no license. Can the insurance company disown liability? The answer has to be an emphatic"

(b)"No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

7. When an owner is hiring a driver he will therefore have to check whether the driver has a driving license. If the driver produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that

the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149(2) (a) (ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia (1987) 2 SCC 654, Sohan Lal Passi*[3] *and Kamla*[4]. We are in full agreement with the views expressed therein and see no reason to take a different view.

8. It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid license and driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the Insurance Company would not then be absolved of liability. It is also clear that even in the case that the licence was fake; the Insurance Company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive.

9. Learned counsel for the appellants placing reliance on a three-Judge Bench decision of this Court in *National Insurance Co. Ltd. vs. Swaran Singh and Others*[5] contended that in view of marshalling of the case laws and principles arrived therein, the Insurance Company cannot escape its liability to indemnify the owner even in the case of breach of licence conditions. After analyzing the relevant provisions in the old Motor Vehicles Act as well as the 1988 Act and the entire case laws, this Court summarized its findings as under:

10. The summary of our findings to the various issues as raised in these petitions is as follows:

> "(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.
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> (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149,

has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defense(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(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 the insured unless the said breach or breaches on the condition of driving license 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 defenses available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's license, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defense or defenses to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the

award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defense in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favor of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defenses of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims." Among the above findings, for our purpose clause (iii) and (iv) are relevant."

11. The effect and implication of the principles laid down in Swaran Singh's case (supra) has been considered and explained by one of us (*Dr. Justice Arijit Pasayat) in National Insurance Co. Ltd. vs. Laxmi Narain Dhut*[6]. The following conclusion in para 38 are relevant:

"38. In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh case has no application to cases other than third-party risks.

2. Where originally the license was a fake one, renewal cannot cure the inherent fatality.

3. In case of third-party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act."

12. In the subsequent decision *Oriental Insurance Co. Ltd. vs. Meena Variyal and Others*[7] which is also a two-Judge Bench while considering the ratio laid down in Swaran Singh's case (supra) concluded that in a case where a person is not a third party within the meaning of the Act, the Insurance Company cannot be made automatically liable merely by resorting to Swaran Singh's case (supra). While arriving at such a conclusion the Court extracted the analysis as mentioned in para 38 of Laxmi Narain Dhut (supra) and agreed with the same. In view of consistency, we reiterate the very same principle enunciated in Laxmi Narain Dhut (supra) with regard to interpretation and applicability of Swaran Singh's case (supra).

13. In the case of *National Insurance Co. Ltd. vs. Kusum Rai and Others*[8] the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence therefore. Ram Lal, who allegedly was driving the said vehicle at the relevant time, was holder of a license to drive light motor vehicle only. He did not possess any license to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. In such circumstances, the Court observed that the appellant-National Insurance Co. Ltd., therefore, could raise the said defense while considering the stand of the Insurance Company. This Court, pointing out the law laid down in Swaran Singh (supra) concluded that the owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid license or not. However, taking note of the fact that the owner has not appeared, the victim was aged only 12 years, the claimants are from a poor background and to avoid another round of litigation applying the decision in *Oriental Insurance Co. Ltd. vs. Nanjappan*[8] and finding that though the appellant-Insurance Company was not liable to pay the claimed amount as the driver was not possessing a valid license and the High Court committed an error in holding otherwise, in the peculiar facts and circumstances of the case and in exercise of jurisdiction under Article 136 of the Constitution declined to interfere with the impugned judgment therein and permitted the appellant-Insurance Company to recover the amount from the owner of the vehicle.

14. In the light of the various principles, the factual finding of the Tribunal, namely, the second respondent, driver was not holding a valid license on the date of the accident and also of the fact that the appellants are none else than widow and minor children of the deceased, we pass the following order:-

"(i) In view of the order of this Court dated 08.12.2006 granting stay of further proceedings of the recovery initiated by the Insurance Company for refund of the amount of Rs.50,000/- with interest claimed to have been paid to the appellants, we make it clear that the appellants need not repay the said amount in spite of our conclusion which is in favour of the Insurance Company. However, we permit the

third respondent-Insurance Company to recover the said amount from the owner of the vehicle in the same manner as was directed in Nanjappan (supra);

(ii) The appellants are permitted to proceed and recover the rest of the amount from the owner and driver of the vehicle respondent Nos. 1 and 2 herein in accordance with law."

15. The appeal is disposed of with the above directions. No costs.

Cases Referred

[1]*(2003) 3 SCC 0338*
[2]*(1996) 5 SCC 0021*
[3]*(1996) 5 SCC 0021*
[4]*(2001) 4 SCC 0342*
[5]*(2004) 3 SCC 0297*
[6]*(2007) 3 SCC 0700*
[7]*(2007) 5 SCC 0428*
[8]*(2006) 4 SCC 0250*
[9]*(2004) 13 SCC 0224*