SUPREME COURT OF INDIA

Oriental Insurance Co. Limited

Vs.

Prithvi Raj

24.01.2008

(Dr. Arijit Pasayat and P.Sathasivam,JJ.)

C.A.No.648 of 2008

JUDGMENT

Dr.Arijit Pasayat, J

(Arising out of S.L.P. (C) No.12607 of 2005)

1. Heard learned counsel for the parties.

2. Leave granted.

3. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short `the Commission') allowing the First Appeal filed by the appellant before it (the respondent herein). He is hereinafter referred to as the complainant. Before the Himachal Pradesh State Consumer Disputes Redressal Commission (in short the State Commission), the complainant had filed a complaint alleging that a Mini Bus owned by the complainant met with an accident during the period when the Insurance Cover/policy issued by the appellant-Insurance Company was in currency. The incident was reported to the Insurance Company but the claim was not settled on the ground that the Driver of the offending vehicle did not have a valid and operating driving license. The complainant took the stand that there was a renewal of the driving license which was valid and legal and, therefore, the claim could not have been repudiated by the Insurance Company. The State Commission rejected the plea, categorically holding that there was no valid license issued by the R.T.A, Hyderabad, as claimed by the Driver.

4. In appeal by the impugned order, a contrary view was taken and it was held that it was accepted, as rightly noted by the State Commission, that the licensing authority at Hyderabad had not issued any license as claimed. Yet, in view of the fact that there was a renewal at Tinsukhia, the claim could not have been refused by the insurance company. Reliance was placed on a decision of this Court in *United India Insurance Co. Limited Vs. Lehru and Ors*[1].

in support of the view.

5. Learned counsel for the appellant-insurance company submitted that Lehru's case (supra) related to a third party claim and not an own damage claim.

6. Learned counsel for the respondent, on the other hand, relied on a decision of this Court in *Lal Chand Vs. Oriental Insurance Co. Ltd*[2]. to contend that the view taken by the National Commission was correct. Reliance has also been placed on a decision of this Court in *National Insurance Co. Ltd. Vs. Swaran Singh & Ors*[3].

7. It is to be noted that Swaran Singh's case (supra) was rendered in the background of Section 149 of the Motor Vehicles Act, 1988 (in short the `Act').

8. This Court had occasion to deal with a similar issue in *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*[4] It was inter alia held as follows:

> "8. Section 149 of the Act relates to duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. The language of the provision is clear that it only relates to third party risk. The corresponding provision in the Old Act is Section 96. Section 166of the Act relates to application for compensation. The same corresponds to Section 110-A of the Old Act. Section 168 of the Act relates to award of the Claims Tribunal which corresponds to Section 110-B of the Old Act. Section 170 deals with impleadment of the insurer in certain cases. Section 149 of the Act needs to be noted in full. The same reads as follows:
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> 149. Duty of Insurers to satisfy judgments and awards against persons insured in respect of third party risks- (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147, in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoid or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the

bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of dis-qualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to he covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall he entitled to recover the excess from that person. (6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy. (7) 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 to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation: For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under Section 165 and "award" means an award made by that Tribunal under Section 168."

9. In Swaran Singh's case (supra) on which learned counsel for the parties have placed reliance undisputedly related to a case under Section 149 of the Act. This Court elaborately dealt with the scope and ambit of Sections 147 and 149 of the Act and after tracing the history of compulsory insurance and the rights of the third parties, held that the concerned cases were mainly concerned with third party rights under the policy. It was held in that context that any condition in the policy whereby the right of the third party is taken away would be void, as noted in para 23 of the judgment.

10 In paras 69 and 70 the principles were culled out in the following terms:

"The Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the event the Insurance Company fails to

prove that there has been breach of conditions of the policy on the part of the insured, the Insurance Company cannot be absolved of its liability. This Court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the condition of the contract of insurance, on the part of the Insurance Company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the records".

11. In para 110 also the summary of the findings were recorded which reads 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.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A orSection 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(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 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) 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 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 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 fulfil 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 defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured.

(x) 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 defence 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 favour 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 thereunder 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 defences 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".

12. At this juncture, it would be necessary to test the logic behind Section 149 of the Act. The conditions under the said provision relate only to third party risks and claims.

> "17. Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third Parties". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act.
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> 18. It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However liberally the policy may be construed, such liberalism cannot be extended to permit substitution of words which are not intended. (See *United India Insurance Co. Ltd. V Harchand Rai Chandan Lal*[5] *and Polymat India (P) Ltd. V. National Insurance Company Ltd. and Ors.*[6]
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> 19. The primary stand of the insurance company is that the person driving the vehicle did not have a valid driving license. In Swaran Singh's case (supra) the following situations were noted:
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> (i) the driver had a license but it was fake;
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> (ii) the driver had no license at all;
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> (iii)the driver originally had a valid license but it had expired as on the date of the accident and had not been renewed;
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> (iv)the license was for a class of vehicles other than that which was the insured vehicle;
>
> (v) the license was a learner's license.
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> Category (i) may cover two types of situations. First, the license itself was fake and the second is where originally that license is fake but there has been a renewal subsequently in accordance with law.
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> 20. Chapter II contains Sections 3, 4 and 5 of the Act relating to licensing of drivers driving the motor vehicles.

24 . In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims.

25. It would be appropriate to take note of what was stated in *Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd*[7]. In paras 9 and 10 it was observed as follows:

"9. Section 157 appears in Chapter XI entitled "Insurance of Motor vehicles against Third Party Risks" and comprises Sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that Chapter. The expression "Certificate of Insurance" means a certificate issued by the authorised insurer under Section 147(3). "Policy of Insurance" includes a certificate of insurance. Section 146(1) posits that "no person shall use except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter". Of course this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to Section 94 of the old Act. Section 147 provides that the policy of insurance to be issued by the authorized insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to Section 95 of the old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e., the insured. Sub-section (2) stipulates the extent of liability and in the case of property of a third party the limit of liability is Rupees six thousand only. The proviso to that sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier, Sub- section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next important provision which we may notice is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued the insurer shall, as between himself and any other person except the insured be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that the legislature was anxious to protect third-party interest. Then comes Section 157 which we extracted earlier. This provision lays down that when the owner vehicle in relation whereto a certificate of insurance is issued transfers to another person the ownership of the

motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub- section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.

10. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third-party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to "damage to any property of a third party" and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is Rupees six thousand only as pointed out earlier. That is why even the Claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third-party property and not the property of the insured."

26. The restrictions relating to appeal in terms of Section 173 (2) does not apply to own damage cases.

38. 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 license 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*[8]. Once the license is a fake one the renewal cannot take away the effect of fake license. 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 stripped 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. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine".

39. As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.

9. The above aspects were highlighted recently in Laxmi Narain Dhut case (supra).

10. In the instant case, the State Commission has categorically found that the evidence on record clearly established that the licensing authority had not issued any license, as was claimed by the Driver and the respondent. The evidence of Shri A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner & Secretary, RTA, Hyderabad who produced the official records clearly established that no driving license was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard.

11. It appears that pursuant to the orders dated 14.07.2005 passed by this Court, the entire amount awarded was deposited in this Court. Since, we have held that the appellant-Insurance Company has no liability, the amount deposited be returned to the appellant-Insurance Company with accrued interest, if any.

12. The appeal is allowed. No costs.

Judgment Referred.

[1](2003) 3 SCC 0338
[2](2006) 8 SCALE 0531
[3] 2004 3 SCC 0297
[4](2007) 3 SCR 0579
[5](2004) 8 SCC 0644
[6](2005) 9 SCC 0174
[7](1996) 1 SCC 0221
[8](2001) 4 SCC 0342