SUPREME COURT OF INDIA

National Insurance Co. Ltd

Vs

Geeta Bhat

C.A.No.2257 of 2008

(S.B.Sinha and V.S.Sirpurkar,JJ.)

31.03.2008

JUDGMENT

S.B.Sinha, J.

(Arising out of SLP (C) No.18509 of 2004)

1. Leave granted.

2. On 14.11.2000, Ishwar Dutt Bhat was traveling in a three wheeler. It met with an accident having been hit by a truck bearing registreation No.HR 38 9179. The said vehicle was insured with the appellant. Respondents, being the heirs and legal representatives of the said Shri Ishwar Dutt, filed a claim petition. Appellant, in its written statement, raised a contention that the driving licence possessed by the driver of the truck was a fake one.

3. In the proceedings before the Motor Vehicles Accident Claims Tribunal (the Tribunal), it prayed for examination of the concerned clerk of the Motor Vehicles Department. The said prayer was allowed. The concerned Clerk of the Licencing Authority, Alwar was summoned. The said summons were served in the office of the Transport Authority. The Transport Authority, however, did not depute any officer to produce the documents called for. Appellant, however, brought on records evidence to the effect that on an investigation made by its own investigator, it was found that no such licence had been issued in the name of Gopal Singh, the driver of the vehicle. In its report dated 20.3.2003, the said investigator stated:

> "Kindly, note that an application was moved by us to the LA Alwar to issue the verification certificate for the DL No. as cited above, along with the photocopy of the DL received by us.But our opinion was returned back by the concerning officer because the above ref. DL has no relevancy with the records LA Alwar. However, the record register was shown to us which shows that DL No.20734/94 was issued on dated 28.3.94. Thus, it is confirmed that no such DL No.3956/Alwar/94 dated 27.3.94

is issued by LA Alwar. Conclusion : Verification certificate for the above said DL cannot be obtained from LA Alwar.This report is issued without prejudice."

4. The Tribunal, however, on the premise that the said fact was not proved, held :

"The insurance company in spite of availing several opportunities did not lead any evidence in support of this assertion that Respondent No.1 was not holding a valid and effective driving licence. So the Insurance Company has failed to discharge the onus of this issue. Accordingly this issue is decided against the Insurance Company."

The appeal preferred by the appellant before the High Court was dismissed summarily.

5. Mr. B.K. Satija, learned counsel appearing on behalf of the appellant, would submit that the licence of the driver having been found to be a fake one, the High Court committed a serious error in dismissing the appeal of the appellant summarily.

6. Liability of an insurer to reimburse the insured, as an owner of the vehicle not only depends upon the terms and conditions laid down in the contract of insurance but also the provisions of the Motor Vehicles Act, 1988 (the Act). The owner of vehicle is statutorily obligated to obtain an insurance for the vehicle to cover the third party risk. A distinction has to be borne in mind in regard to a claim made by the insured in respect of damage of his vehicle or filed by the owner or any passenger of the vehicle as contradistinguished from a claim made by a third party.

7. An owner of the vehicle is bound to make reasonable enquiry as to whether the person who is authorized to drive the vehicle holds a licence or not. Such a licence not only must be an effective one but should also be a valid one. It should be issued for driving a category of vehicle as specified in the Motor Vehicles Act and/or Rules framed thereunder.

8. Indisputably, in a case where the terms of the contract of insurance are found to have been violated by the insured, the insurer may not be held to be liable for reimbursing the insured. So far as a driving licence of a professional driver is concerned, the owner of the vehicle, despite taking reasonable care, might have not been able to find out as to whether the licence was a fake one or not. He is not expected to verify the genuineness thereof from the Transport Offices.

9. The question in regard to the statutory obligation on the part of an owner of a vehicle to obtain an insurance policy to cover a third party risk, vis-`-vis possession of a fake licence by a driver who had been employed bona fide by the owner thereof had come up for consideration before this Court *United India Insurance Co. Ld. v. Lehru & Ors*[1].

10. Lehru's case was noticed in great details by a Three Judge Bench of this Court in *National Insurance Co. Ltd. v. Swaran Singh*[2] holding:

"92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later."

11. Swaran Singh had been followed later on in some cases by this Court. It was, however, distinguished in *National Insurance Co. Ltd. v. Laxmi Narain Dhut*[3] in the following terms:

"9. The primary stand of the insurance company is that the person driving the vehicle did not have a valid driving licence. In Swaran Singh case the following situations were noted:

(i)The driver had a licence but it was fake;

(ii) The driver had no licence at all;

(iii) The driver originally had a valid licence but it had expired as on the date of the accident and had not been renewed;

(iv)The licence was for a class of vehicles other than that which was the insured vehicle;

(v) licence was a learner's licence.

Category (i) may cover two types of situations. First, the licence itself was fake and the second is where originally that licence is fake but there has been a renewal subsequently in accordance with law."

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37. 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 licence was a fake one. Once it is established the natural consequences have to flow.

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

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

2. Where originally the licence 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.

The High Courts/Commission shall now consider the matter afresh in the light of the position in law as delineated above."

12. The said principle was reiterated in The *Oriental Insurance Co. Ltd. v. Meena Variyal & Ors*[4]. stating:

"It was argued by learned counsel for the appellant that since on the finding that the deceased was himself driving the vehicle at the time of the accident, the accident arose due to the negligence of the deceased himself and hence the insurer is not liable for the compensation. Even if the case of the claimant that the car was driven by Mahmood Hasan was true, then also, the claimant had to establish the negligence of the driver before the insured could be asked to indemnify the insured. The decision in *Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayan & Anr*[5]. of a three Judge Bench of this Court was relied on in support.

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Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on *Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai & Anr*[6]. in support. In that decision, this Court clarified that the observations in Minu B. Mehta's case (supra) are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VIIA of the 1939 Act and the introduction of Section 92A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163A of the Act of 1988

providing for compensation without proof of negligence in contradistinction to Section 166 of the Act. We may notice that Minu B. Mehta's case was decided by three learned Judges and the Gujarat State Road Transport Corporation case was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority."

[See also *Oriental Insurance Co. Ltd. v. Brij Mohan & Ors*[7]. and *United India Insurance Co. Ltd. v. Davinder Singh*[8] In *Smt. Yallawwa & Ors. v. National Insurance Co. Ltd. & Anr*[9]. this Court opined :"The recent decisions of this Court are authorities for the proposition that the insurance company would not be liable in cases where passengers of a vehicle are not third parties."

{See also *Prem Kumar & Ors. v. Prahlad Dev & Ors*[10]. and *Oriental Insurance Co. Ltd. v. Prithvi Raj*[11]

Thus, whereas in a case where a third party has raised a claim, Swaran Singh (supra) would apply, in a claim made by the owner of the vehicle or other passengers of a vehicle, it would not.

13. We would, therefore, assume that the licence possessed by the 6th respondent, Gopal Singh was a fake one. Only because the same was fake, the same, having regard to the settled legal position, as noticed hereinbefore, would not absolve the insurer to reimburse the owner of a vehicle in respect of the amount awarded in favour of a third party by the Tribunal in exercise of its jurisdiction under Section 166 of the Motor Vehicles Act, 1988.

14. Nobody has appeared on behalf of the respondents despite service of notice.

15. We, therefore, are of the opinion that interest of justice shall be subserved if the appellant is directed to pay the awarded amount in favour of respondent Nos.1 to 5 with liberty to recover the same from the owner and the driver of the vehicle, respondent Nos.6 and 7 in an appropriate proceeding in accordance with law.

16. The appeal is dismissed with the aforementioned observations. No costs.

Judgment Referred.

[1]*(2003) 3 SCC 338*
[2]*(2004) 3 SCC 297*
[3]*(2007) 3 SCC 700]*
[4]*(2007) 5 SCALE 0269*
[5]*(1977) 2 SCR 0886*
[6]*(1987) 3 SCC 0234*
[7]*(2007) 7 SCALE 0753*
[8]*(2007) 8 SCC 0698*

[9]*(2007) 8 SCALE 0077*
[10]*(2008) 1 SCALE 0531*
[11]*(2008) 1 SCALE 0727*