SUPREME COURT OF INDIA

Singh Ram

Vs.

Nirmala

C.A.No.2103 of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

06.03.2018

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP (Civil)No 22630 of 2015

1. Delay condoned.

2. In a claim for compensation under Section 166 of the Motor Vehicles Act 1988, the Motor Accident Claims Tribunal ('the Tribunal'), Yamunanagar at Jagadhri found that the insured did not hold a valid driving licence at the time of the accident. The Tribunal absolved the insurer for that reason. The insurer was, however, directed to pay the compensation awarded to the claimant and it from the owner of the offending motor cycle. The High Court dealt three appeals: one filed by the claimant seeking enhancement of compensation, a second by the insurance company and the third by the owner cum driver of the offending vehicle. The High Court held that in view of the decision of this Court in National Insurance Co. Ltd. v Swaran Singh , the Tribunal was correct in directing the insurer to pay the compensation and to recover it from the owner-cum-driver of the offending vehicle. The present appeal has been filed by the owner and driver. The only point which has been urged in support of the appeal is that the Tribunal and the High Court erred in fastening the liability on him by granting a right of recovery to the insurer.

3. The accident took place on 22 March 2010. The deceased Sunil Kumar was riding a motor cycle bearing Registration No HR-04B-4673. The Tribunal found that the accident was caused as a result of the rash and negligent act of the appellant. This finding of fact has not been disturbed by the High Court. The deceased was employed as a sweeper in Haryana Roadways and was engaged on a salary of Rs 11,928 per month. The Tribunal allowed future prospects of 50%, the deceased being just short of 36 years of age. After deducting an amount representing one-fourth of the earnings for personal expenses, the Tribunal applied a multiplier of 15. The total compensation was computed at Rs 24,15,420 to which the T ribunal added an amount of Rs 20,000 under conventional heads. However, the Tribunal held

that the financial assistance which the heirs of the deceased would receive over a period of 12 years from the employee (amounting to Rs 16,16,112) would have to be deducted from the compensation. After making the deduction, the Tribunal awarded an amount of Rs. 8,19,500 together with interest at 7.5 per cent per annum from the date of the claim petition. The High Court has enhanced the compensation to Rs 16,04,912.

4. Special Leave Petition (C) No 7737 of 2015 filed by the claimant, which was connected to this appeal, has been dismissed on 8 February 2018.

5. In the present appeal by the owner cum driver of the offending motor cycle, the submission is that in view of the decision of a Bench of three learned Judges of this Court in Swaran Singh (supra), the insurer ought not to have been absolved. Hence the direction to the insurer to pay and recover the compensation from the appellant should, it has been urged, be modified to fasten a joint and several liability on the insurer.

6. Before we advert to the decision in Swaran Singh (supra) a brief reference to the facts as they emerge from the decision of the Tribunal is necessary. Initially before the Tribunal the appellant produced a driving licence issued by the Motor Vehicles Department, Agra (Exh.R-1). The driving licence was found to be fake. The statement of the Senior Assistant in the office of the RTO, Agra was that Exh.R-1 had not been issued by the office. The Tribunal noted that the witness had proved the report (Exh.R-2) issued by the department and concluded that the licence was fake. Faced with this situation, the appellant attempted to prove that he held a valid driving licence issued by the licencing authority at Jagadhri to drive a motor cycle. The Tribunal rejected the application filed by the appellant for producing additional evidence. The Tribunal noted that even otherwise, the licence which was issued by the licencing authority, Jagadhri for a tractor and car was valid only until 29 August 2009. The accident took place on 22 March 2010. The licence was renewed on 28 November 2011 more than two years after it had expired. On these facts, the Tribunal observed that on the date of the accident, the appellant was not holding a valid and effective driving licence nor was there any evidence to indicate that the licence was sought to be renewed as required in law, within 30 days of its expiry. The Tribunal also observed that the appellant did not hold a valid licence to drive a motor cycle. On these grounds, the insurer was absolved. The High Court has confirmed the direction of the Tribunal to pay and recover.

7. In Swaran Singh (supra), this Court held that the holder of a driving licence has a period of thirty days on its expiry, to renew it:

> “45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor.

Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

The following conclusion has been recorded in summation in the judgment::

"(///) 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 wherefor 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 licence 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".

8. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge.

9. In the circumstances, the direction by the T ribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs.