

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Motor Vehicle Act, 1988

FAO. No.352/2001

Judgment reserved on: 27th November, 2008

Judgment delivered on: 3rd December, 2008

National Insurance Company Ltd.
Delhi Regional Office-Ii,
2-E/9, Jhandewalan Extension,
New Delhi.
Through: Ms. Sonia Sharma,Adv.

.Appellant

Versus

1. Shri Dharambir Singh
S/o Shri Harnarain Singh,
R/o E-5/46, Rajiv Gali,
Dayalpur Extension,
Delhi.
2. Shri Tarsen Lal (Driver),
S/o Shri Pahu Lal,
R/o Village Narad, P.O. Massewal,
Tehsil Anandpur Sahib,
District Ropar,
Punjab.
3. Shri Nirmal Singh(Owner),
S/o Shri Bishan Singh,
R/o Ward No.10, Amlloh Road,
Khanna,
District Ludhiana,

Punjab.
Through: None.

...Respondents.

V.B.Gupta, J.

1. Appellant-Insurance Company has filed the present appeal u/s 173 of the Motor Vehicle Act, 1988 (for short as 'Act') against judgment dated 21st March, 2001 passed by Shri A.K. Pathak, Judge, MACT (for short as 'Tribunal').

2. Vide impugned judgment, the Tribunal passed an award for the sum of Rs.1,33,000/- (Rupees One Lac Thirty Three Thousand only) together with interest @ 9 per cent per annum from 23rd February, 1999 till realization, in favour of the claimant.

3. Being dissatisfied the Insurance Company has filed the present appeal.

4. Notice of this appeal was issued to the claimant, driver and owner of the offending vehicle. 5. Respondent/claimant was duly served and on his behalf one Advocate also appeared but later on he absented and again respondent was served by publication. Thereafter, again he did not appear.

6. On the other hand, respondent No.2 and 3 could not be served by ordinary process and they were also served by publication, but they did not appear.

7. Learned counsel for the appellant has advanced her arguments.

8. It has been contended by learned counsel for Appellant-Insurance Company, that the driver of the offending vehicle was not holding the driving licence on date of accident and as such insurance company is not liable to indemnify the owner and driver and the award if any, could have been passed only against the owner and driver.

9. The other contention is that the Tribunal wrongly did not place reliance on report of Local Commissioner which clearly stated that the driver in present case was not holding a valid driving licence which was confirmed by statement of RTO, recorded by said Local Commissioner in the connected case pending in the court of MACT, Chandigarh.

10. Learned Counsel in support of her contentions has cited a decision of Apex Court in National Insurance Co. Ltd. vs. Swaran Singh and Others, 2004 ACJ 1.

11. Before delving with the contentions of the appellant counsel, it is relevant to reproduce herein the relevant sections of the Act.

12. Section 3 of the Act reads as under; 'Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do. (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.'

13. Section 181 of the Act reads as under; 'Driving vehicles in contravention of section 3 or section 4.- Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.'

14. Chapter XI of the Act, providing compulsory insurance of vehicles against third party risks are 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.

15. Section 149 of the Act provides as follows; 'Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) x x x (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) x x x x (i) x x x x (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 disqualifications; (iii) x x x x

16. In a plethora of cases, the Apex Court and various High Courts have held that, if there is a condition in the insurance policy that only a licensed driver is to drive the vehicle, the insurance company would not be liable in case there is a breach.

17. There could be no doubt that in order to escape liability, not only it should be proved that the driver of the vehicle was not having a licence at the time of the accident, but also the insurance company should prove that the driver was disqualified from holding or obtaining a licence or never had any licence at all. Merely proving that on the date of the accident, the driver did not have a licence, is not enough to hold that the insurance company is not liable for claim. The onus of proving that the driver of the vehicle never had a licence or was disqualified from holding a licence is on the insurance company.

18. The Apex Court in *Narcinva V. Kamat and Anr. v. Alfredo Antonia Doe Martins and Ors.* [1985 ACJ 397], observed; ‘When the Insurance Company complains of a breach of the term of contract, which would permit it to disown its liability under the contract of insurance, the burden is squarely on the Insurance Company to prove that the breach has been committed by the other party to the contract. The test in such a situation would be ‘who would fail, if no such evidence is led’. With this principle of law in view, the evidence has to be judged. Merely non-production of licence or non-examination of the driver of the vehicle is not enough nor any adverse inference can be drawn against the person holding that because of non-examination of the driver or non-production of the licence, the burden is discharged by a mere question in cross examination nor the owner is under any obligation to furnish the evidence so as to enable the Insurance Company not to riggle out its liability under the contract of insurance.’

19. When the Insurance Company takes the plea that it is not liable to pay compensation or to indemnify the insured as the driver was not holding a valid licence for driving the vehicle on the date of the accident and the vehicle was being driven in breach of the terms of the policy, the Insurance

Company has to discharge the burden by placing legal and cogent evidence before the Tribunal (see *Narcinva V. Alfredo (supra)*) : and a Division Bench case of this Court in *Shajadibai v. Babookhan and Ors. Vol. (1) 1988 ACC 24*).

20. The Tribunal, with regard to Driving Licence has held as under; 'Ex.RW1/2 was exhibited subject to objections of counsel for the petitioner. This report has been given by one Shri Santosh Singh advocate, in the alleged proceedings. There is nothing on record to show that this report was duly proved and accepted by the said tribunal. Copy of judgment of Tribunal has not been placed on record. Local Commissioner has not been produced in the witness-box in this case. Ex.RW1/2 cannot be read in evidence. Admittedly respondent No.3 has not made any efforts to call a competent witness from the Road Transport Authority, Hyderabad to depose in this court that respondent No.1 was not holding valid driving licence at the time of accident.' Further held; 'In the light of above discussion, I am of the view that, respondent No.3 has failed to prove that respondent No.1 was not holding valid driving licence at the time of accident. Keeping in view it has to be taken that respondent No.1 was having valid driving licence at the time of accident and further that terms and conditions of the policy have not been breached. Accordingly, I am of the view that, respondent No.3 being insurer of the offending vehicle is also liable to pay compensation to the petitioner.'

21. In *National Insurance Co. Ltd. vs. Swaran Singh and others (Supra)*, cited by learned counsel for appellant, it has been held that; 'The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time. Further held; 'The insurance companies are, 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.' The Court also held that; 'Even where the insurer is able to prove breach on the part of 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 insured unless the said breach or breaches of 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.'

22. In the absence of any evidence to this effect on record from the side of appellant that respondent no.2 was not holding a valid and effective driving licence at the time of alleged accident, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal.

23. The compensation awarded by the Tribunal is just, fair and equitable.

24. Thus, the present appeal is not maintainable and the same is hereby dismissed.

25. No order as to costs.

26. Trial court record be sent back.

Sd/-
V.B.GUPTA, J.