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(2008) 08 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Hyline Auto Industries and Others	APPELLANT
Vs	
Ram Niwas and Others	RESPONDENT

Date of Decision: Aug. 6, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149

Citation: AIR 2009 P&H 1855 : (2008) 152 PLR 496 : (2009) 1 RCR(Civil) 295

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Permod Kohli, J.
Appellant is the owner of the offending vehicle who is aggrieved of the impugned award dated 31.10.2002 to the extent it directs the appellant to pay the liability under the award and exoneration of the National Assurance Company Limited (in short "the Insurance Company) respondent No. 3 herein. In the claim petition filed before the Motor Accidents Claims Tribunal, Gurgaon (in short "the Tribunal) the claimants claimed compensation for the death of one Ram Singh. The Insurance Company disputed its liability on the ground that the driver of the offending vehicle was not possessed of valid driving licence on the date of the accident. The Tribunal framed the following issue on this question.

Whether respondent No. 1 did not possess a valid driving licence on the date of accident? OPP

2. The driving licence of the driver was placed on record as Ex.R-1. This driving licence depicts that the driver was entitled to drive a motor with gear and motor car only. The offending vehicle is a jeep manufactured by Mahindra & Mahindra. The Tribunal has held that the Mahindra & Mahindra Jeep was a utility vehicle and cannot be equated with a

motor car. On that basis, the Tribunal shifted the liability to the owner of the offending vehicle, the appellant herein, although the vehicle was duly insured with respondent No. 3. Insurance Company. Consequently, the Insurance Company was absolved of the liability under the award and the appellant was directed to pay the award amount. It is this direction which is seriously challenged in the present appeal. It is not in dispute that the driver of the offending vehicle was in possession of a licence to driver light motor vehicle/motor car. No other material except the make of the vehicle was brought on record to testify that the offending vehicle is not a motor car or a light motor vehicle.

3. Learned Counsel appearing on behalf of respondent Insurance Company has supported the award relying upon the judgment of Honble the Apex Court in the case of New India Assurance Co. Ltd. Vs. Prabhu Lal, , wherein the Apex Court made the following observations:

In Chandra Prakash Saxena (S.L.P. No. 17794 of 2004), the vehicle involved in . accident was. a Jeep Commander made by Mahindra & Mahindra, a passenger carrying commercial vehicle, and in view of the fact that the driver was holding licence to drive Light Motor Vehicle (LMV), he could not have plied the vehicle in question. For the reasons recorded hereinabove in the main matter of Prabhu Lal i.e. SLP (C) No. 7370 of 2004, the Insurance Company could not have been held liable and that appeal also deserves to be allowed.

4. In the aforesaid case, since Honble the Apex Court exonerated the Insurance Company and imposed the liability upon the owner of the vehicle on the ground that the Jeep Commander made by Mahindra & Mahindra is a passenger carrying commercial vehicle. This vehicle was held not to be a Light Motor Vehicle. However, in the present case, no evidence has been led whatsoever by the Insurance Company to establish that the offending vehicle was/is a commercial utility vehicle. The findings recorded by the Motor Accidents Claims Tribunal, Gurgaon that the offending vehicle is not a Light Motor Vehicle, are based upon no evidence and, thus, are perverse. These findings cannot be sustained in law.

5. To the contrary, a Full Bench judgment of this Court in the case of National Insurance Co. Ltd. Vs. Parveen Kumar and Others, considered a similar question. In this case the offending vehicle was also a Jeep and the question that arose for consideration was whether it falls within the definition of Light Motor Vehicle and the Insurance Company can be absolved of its liability under the insurance contract and as to whether the accident can be attributed to the driving licence of the driver. Relying upon various judgments of (the Apex Court, the Honble Full Bench made following observations:

The issue being no more res-integra, needs no further elaboration. We may, however, hasten to add that the Insurance Company can not be absolved of its liability to pay the compensation by simply pleading that the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of the different class

of description, unless it is proved that the cause of accident was the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of different class or description. The observations made by the Supreme Court presuppose that if the driver was driving a vehicle of which he might not be holding licence as such, but was holding a driving licence of a different description of vehicle and the driving method of both the vehicles, for which licence was obtained and the one which was being driven, was the same and when even the mechanism of the vehicle is also same, the defence projected by the Insurance Company with regard to the driver not possessing requisite type of licence could be of no avail to it.

We thus overrule the view taken by the Division Bench in National Insurance Company Ltd. (supra) and hold that if on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The defence projected by the Insurance Company in the context of Section 149(2)(a)(ii) and proviso appended to Sub-sections (4) and (5) of the Motor Vehicles Act, 1988 can succeed only if it is proved that the accident had taken place only because the driver was not possessing requisite type of licence.

6. Apart from the above, Honble the Supreme Court has also indicated the circumstances whereunder the Insurance Company can avoid its statutory liability under the contract of Insurance in the event of a defective or improper driving licence of the driver of the offending vehicle. Honble the Apex Court made the following observations in National Insurance Co. Ltd. Vs. Swaran Singh and Others, :

108(i) to (v) x x x x x

(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 insured unless the said breach or breaches of the conditions 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 u/s 149(2) of the Act.

7. From the dictum of the aforesaid judgment of Honble the Supreme Court it becomes apparent that the Insurance Company can be absolved of its liability only if it is able to establish deliberate breach of the insurance policy on the part of the insurer. The burden to establish is upon the insurance company and it must lead affirmative evidence to establish the same. Otherwise also the breach must be fundamental and the accident must be the outcome of the driving ability of the driver of the offending vehicle. No evidence has been brought on record to establish that accident has been caused on

account of any defect in the driving skill of the driver.

8. In the absence of any such material, the Insurance Company cannot be permitted to escape its statutory liability both under the provisions of Motor Vehicles Act and contract of insurance.

9. In view of the above legal and factual position, the impugned award imposing liability upon appellant No. 1 owner of the offending vehicle is not sustainable and is liable to be set aside. It is the Insurance Company-Respondent No. 3 which is liable to satisfy the award.

10. The appeal is accordingly allowed and it is directed that respondent No. 3 shall pay the award amount to the claimants, if not already paid.