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(2011) 12 AHC CK 0285

Allahabad High Court

Case No: First Appeal from Order No. 2958 of 2011

Shriram General Insurance Company Ltd.	APPELLANT
Vs	
Satya Veer and Another	RESPONDENT

Date of Decision: Dec. 23, 2011

Acts Referred:

- Insurance Act, 1938 - Section 64VB
- Motor Vehicles Act, 1988 - Section 147, 147(1), 147(3), 147(5), 149

Hon'ble Judges: Y.C. Gupta, J; Satya Poot Mehrotra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The present Appeal has been filed u/s 173 of the Motor Vehicles Act, 1988, against the Judgment and Order/Award dated 21.5.2011 passed by the Motor Accidents Claims Tribunal, Meerut in Motor Accident Claim Case No. 751 of 2010 filed by the claimant-respondent no. 1 on account of the injuries sustained by him in an accident which took place in the intervening night of 29/30.4.2010 at 12 o''clock.

2. The case setup in the Claim Petition was that the claimant-respondent no. 1 was travelling in a Tractor along with his family in the intervening night of 29/30.4.2010 at 12 o''clock; and that a Truck bearing Registration No. UP 21 J 9569 (hereinafter also referred to as "the vehicle in question") being driven by its Driver rashly and negligently, arrived from the backside and collided with the said Tractor from the backside resulting in grievous injuries to the claimant-respondent no. 1.

3. The respondent no. 2 was the owner of the vehicle in question while the AppellantInsurance Company was the insurer of the vehicle in question.

4. After exchange of the pleadings between the parties, the Tribunal framed Issues in the said Claim Case.

5. Evidence was led in the said Claim Case.

6. Having considered the material on record, the Tribunal recorded its findings on various Issues.

7. The Tribunal, interalia, held that the accident in question took place on account of rash and negligent driving by the Driver of the vehicle in question resulting in grievous injuries to the claimant-respondent no. 1.

8. The Tribunal further held that there was no contributory negligence on the part of the claimant-respondent no. 1 for the accident in question.

9. The Tribunal further held that the Driver of the vehicle in question did not have valid Driving Licence at the time of the accident in question.

10. In view of the above findings, the Tribunal passed the impugned Judgment and Order/Award dated 21.5.2011, interalia, awarding to the claimant-respondent no. 1, compensation amounting to Rs. 8,99,731/- with interest at the rate of 6% per annum with effect from the date of presentation of the Claim Petition till the date of final payment.

11. However, in view of the above finding recorded by the Tribunal that the Driver of the vehicle in question did not have valid Driving Licence at the time of the accident in question, the Tribunal directed that the amount of compensation would initially be paid by the Appellant-Insurance Company, and thereafter, the Appellant-Insurance Company would have right to recover the same from the owner of the vehicle in question (respondent no. 2 herein).

12. We have heard Sri Rahul Sahai, learned counsel for the Appellant-Insurance Company and Shri S.K. Tripathi, learned counsel for the Caveator/Claimant-Respondent No. 1, and perused the record.

13. Sri Rahul Sahai, learned counsel for the Appellant-Insurance Company submits that having held that the aforesaid vehicle in question was being run against the terms and conditions of the Insurance Policy, the Tribunal erred in directing the Appellant-Insurance Company to pay the amount of compensation and thereafter recover the same from the owner of the vehicle in question, i.e., respondent no. 2 herein. Sri Rahul Sahai submits that in any case, the interest of the Appellant-Insurance Company as against the owner of the vehicle in question (respondent no. 2 herein) should have been properly secured so that after making the payment of compensation under the impugned award, the Appellant-Insurance Company would be able to recover the same from the owner of the aforesaid vehicle in question. Sri Rahul Sahai has relied upon the following decisions in this regard:

1. Oriental Insurance Company Ltd. v. Sri Nanjappan & Others, 2004 (2) TAC 12 (SC).

2. National Insurance Company v. Challa Bharathamma, 2005(1) TAC 4 (SC).

14. We have considered the submissions made by Shri Rahul Sahai, learned counsel for the Appellant-Insurance Company.

15. As regards the submission made by Sri Rahul Sahai that the Tribunal erred in directing the Insurance company to make the payment of compensation and thereafter recover the same from the owner of the vehicle in question, it is pertinent to refer to the relevant provisions of the Motor Vehicles Act, 1988. Sub-section (5) of Section 147 of the Motor Vehicles Act, 1988 lays down as under:

147. Requirements of policies and limits of liability (1) to (4).....

(5). Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

16. The above-quoted provision thus provides that an insurer issuing a policy of insurance u/s 147 of the said Act, shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

17. Subsection (1) of Section 149of the Motor Vehicles Act, 1988 provides as follows:

149. Duty of insurers to satisfy judgements and awards against persons insured in respect of third party risks(1) If, after a certificate of insurance has been issued under subsection (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 subsection (1) of Section 147 (being a liability covered by the terms of the policy) [or under the provisions of Section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided 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 thereunder, as if he 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) to (7).....

18. The above-quoted provision thus provides that in case any judgment or award is obtained against any person insured by the policy, then the insurer shall pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and interest. This will be so even though the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy.

19. In view of the above provisions, we are of the opinion that the directions given by the Tribunal requiring the Appellant-Insurance Company to make the deposit of compensation awarded under the impugned award and thereafter recover the same from the owner of the aforesaid vehicle in question, is in accordance with law, and the same does not suffer from any infirmity.

20. The above conclusion is supported by various decisions of the Apex Court:

1. Oriental Insurance Co. Ltd. v. Inderjit Kaur and others, AIR 1998 SC 588.

2. National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

3. National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, .

4. Prem Kumari & Others v. Prahlad Dev & Others, 2008(1) T.A.C. 803 (SC).

21. In Oriental Insurance Co. Ltd. v. Indrajit Kaur and others, AIR 1998 SC 588, their Lordships of the Supreme Court opined as under (paragraph 7 of the said AIR):

7. We have, therefore, this position. Despite the bar created by S. 64VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Ss. 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

(Emphasis supplied)

22. This decision thus supports the conclusion mentioned above on the basis of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988.

23. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , their Lordships of the Supreme Court held as follows(paragraph 105 of the said AIR):

105. The summary of our findings to the various issues as raised in these petitions is as follows:

(i). Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against thirdparty 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 u/s 163A or Section 166 of the Motor Vehicles Act, 1988, interalia, 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 subsection (2) (a) (ii) of Section149, 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 vehicles;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 prov e 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 u/s 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.

(viii). If a vehicle at the time of accident was driven by a person having a learner''s licence, the insurance Companies would be liable to satisfy the decree.

(ix). The claims tribunal constituted u/s 165read 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. 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 Sections 149(2) read with subsection (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 u/s 174 of the Act as arrears as land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by subsection (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 subsection (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover 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.

(Emphasis supplied)

24. Proposition nos. (vi) and (x), reproduced above support the conclusion that the direction given by the Tribunal in the award impugned in the present case is in accordance with law.

25. In National Insurance Co. Ltd. v. Laxmi Narain Dhut, 2007 (2) T.A.C. 398 (S.C.), their Lordships of the Supreme Court considered the decision in National Insurance Co. Ltd. v. Swaran Singh (supra) and held as under (paragraph 35 of the said TAC):

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

(1). The decision in Swaran Singh''s case (supra) has no application to cases other than third party risks.

(2). Where originally the license was fake one, renewal cannot cure the inherent fatality.

(3). In case of third party risks the insure r 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/Commissions shall now consider the matter afresh in the light of the position in law as delineated above.

The appeals are allowed as aforesaid with no order as to costs.

(Emphasis supplied)

36. In view of the above decision, it is evident that in case of third party risks, the decision in National Insurance Co. Ltd. v. Swaran Singh and others (supra) would apply, and the insurer has to indemnify the amount to the third party and thereafter may recover the same from the insured.

37. In Prem Kumari & others v. Prahlad Dev and others, 2008(1) T.A.C. 803 (S.C.), their Lordships of the Supreme Court have reiterated the view expressed in National Insurance Company Limited. v. Laxmi Narain Dhut''s case (supra) explaining the decision in National Insurance Company Limited v. Swaran Singh and others (supra), and held as under (paragraphs 8 and 9 of the said TAC):

8. The effect and implication of the principles laid down in Swaran Singh''s case (supra) has been considered and explained by one of us (Dr. Justice Arijit Pasayat) in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, . The following conclusion in para 38 are relevant:

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

(1). The decision in Swaran Singh''s case (supra) has no application to cases other than third party risks.

(2). Where originally the license 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.

9. In the subsequent decision The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , which is also a two Judge Bench while considering the ratio laid down in Swaran Singh''s case (supra) concluded that in a case where a person is not a third party within the meaning of the Act, the Insurance Company cannot be made

automatically liable merely by resorting to Swaran Singh''s case (supra). While arriving at such a conclusion the Court extracted the analysis as mentioned in para 38 of Laxmi Narain Dhut (supra) and agreed with the same. In view of consistency, we reiterate the very same principle enunciated in Laxmi Narain Dhut (supra) with regard t o interpretation and applicability of Swaran Singh'' s case (supra).

(Emphasis supplied)

38. In view of the above decisions, it is evident that the directions given by the Tribunal requiring the Appellant-Insurance Company to deposit the amount awarded under the impugned award in the first instance, and thereafter, recover the same from the owner of the vehicle in question, are valid and legal.

39. As regards the submission made by Sri Rahul Sahai that the interest of the Appellant-Insurance Company should be protected as against the owner of the vehicle in question (respondent no. 2 herein) so that in case the Appellant-Insurance Company deposits the amount of compensation, it may be able to recover the same from the owner of the aforesaid vehicle in question, it is pertinent to refer to the decisions relied upon by Sri Rahul Sahai.

40. In Oriental Insurance Company Ltd. v. Sri Nanjappan and others, 2004(2) T.A.C. 12(SC) (supra), their Lordships of the Supreme Court opined as under (Paragraph 7 of the said T.A.C.):

7. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur''s case 2004 (1) T.A.C. 366 (SC)(supra) that the insurer shall pay the quantum of compensation fixed by Tribunal, about which there was no dispute raised to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.
(Emphasis supplied)

41. In National Insurance Company v. Challa Bharathamma, 2005 (1) T.A.C. 4 (SC)(supra), it was laid down as follows (Paragraph 13 of the said T.A.C):

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the Quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.
(Emphasis supplied)

42. In our opinion, the directions contemplated in the above decisions may be sought by the Appellant-Insurance Company before the Executing Court when the Appellant-Insurance Company, after depositing the amount awarded under the impugned award, moves appropriate application before the Executing Court to recover the said amount from the insured person, i.e. the owner of the vehicle in question (respondent no. 2 herein), while the claimant files an application for the execution of the award or for the release of the amount deposited by the Appellant-Insurance Company. We are refraining from expressing any opinion in this regard.

43. We may, however, refer to two decisions of this Court wherein the above decisions of the Supreme Court have been considered.

44. In Smt. Bhuri and others v. Smt. Shobha Rani and others, 2007 (1) T.A.C. 20 (All.), a learned Single Judge of this Court held as under (paragraph 5 of the said T.A.C.):

5. From the aforesaid case law, as referred to by the learned Counsel for the parties, it would be evident that in spite of the fact that the insurer is not made liable to compensate the claimants under the policy u/s 149of the Motor Vehicles Act, still the liability of payment, under the law as developed by the Apex Court in this context, has been assigned to the Insurance Company. At the same time, the Insurance

Company has also been given liberty to recover the said amount from the insured within the provisions of the Motor Vehicles Act itself and without taking the burden of filing a suit for that purpose. This principle of law was initially propounded in Baljit Kaur''s case (supra) and it has been followed in the aforesaid cases referred to by the parties concerned. But in the subsequent cases more especially in Nanjappan''s case (supra) it has also been observed that before releasing the amount under deposit before the Court the insured/owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the Insurance Company will pay to the claimants. After that notice the Court may direct the attachment of the offending vehicle as part of the security and could also pass appropriate orders in accordance with law. In case of default it shall be open to the Court to direct realisation of the amount from the insured/owner by disposal of security or from any other property or properties of the owner of the vehicle. Therefore, all these modes have been provided by the Apex Court for the insurer to make recovery from the insured. But from all these directions as given by the Apex Court, the purport is that the Court shall not undermine the interest of the claimants for whose welfare the Supreme Court has been developing this law through all these cases even by interpreting otherwise the liability of the insurer with Section 149 of the Motor Vehicles Act. Thus, what is the crux of the matter in the present case is that the revisionists-claimants cannot be made to suffer even if the insured/owner of the vehicle does not furnish security or does not appear before the Court in pursuance to the notice issued to him. The burden of recovering the amount within the provisions of the Act itself has been placed upon the insurer in the aforesaid judgments of the Apex Court. The claimants who have obtained the award in their favour have not been made to suffer through any observation made by the Supreme Court in these cases. Thus, in the aforesaid view of the matter, what I feel is that it would be just and proper if the Court below is directed to first take resort to the issuance of notice to the insured/owner of the vehicle and thereafter only the money under deposit before the Court should be released in favour of the claimants.
(Emphasis supplied)

45. In National Insurance Co. Ltd. Vs. Smt. Khursheeda Bano and Others, , a Division Bench of this Court laid down as follows (paragraph 4 of the said A.W.C.):

4. Learned counsel has cited the judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , to establish that the claim of the insurance company should be secured by the owner. We have no quarrel with such proposition. What we want to say is that unless and until an appropriate application in the selfsame proceeding is made by the insurance company for the purpose of recovery, the question of furnishing security by the owner cannot arise. Such situation is yet to ripe. At this stage, we are only concerned with the payment of compensation to the claimants which cannot be stalled and has got nothing to do

with the dispute regarding liability between the owner and the insurance company. The sufferer is a third party. Moreover, in such judgment, the Division Bench of the Supreme Court has categorically held " considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability." In effect it is a stopgap arrangement to satisfy the award as soon as it is passed. The judgment of 3 Judges'' Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , also speaks in para 110 that the Tribunal can direct that the insurer is liable to be reimbursement 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. Therefore, the intention of the Legislature as well as the interpretation by the Supreme Court and different High Courts is well settled to the extent that under no circumstances payment of compensation to the claimants will be stalled. Even at the cost of the repetition we say, it has nothing to do with the dispute with regard to liability of owner or insurer, which can be considered in the separate application in the selfsame cause or in an execution application in connection thereto to be initiated by the insurance company.
(Emphasis supplied)

46. In view of the above discussion, we are of the opinion that the Tribunal did not commit any illegality in directing the Appellant Insurance Company to make deposit of the amount of compensation, and recover the same from the insured person i.e. the owner of the vehicle in question respondent no. 2 herein.

47. After making deposit of the amount awarded under the impugned award, it will be open to the Appellant-Insurance Company to initiate appropriate proceedings for recovery of the amount from the owner of the aforesaid vehicle in question (respondent no. 2 herein), and seek appropriate directions in such proceedings.

48. It is made clear that in case any appeal is filed by the claimant-respondent no. 1 or by the owner of the aforesaid vehicle in question (respondent no. 2 herein), it will be open to the Appellant-Insurance Company to contest the same on the grounds legally open to the Appellant-Insurance Company.

49. The amount of Rs. 25,000/- deposited by the Appellant-Insurance Company while filing the present appeal, will be remitted to the Tribunal for being adjusted towards the amount to be deposited by the Appellant-Insurance Company, as per the directions given in the impugned award.

50. Subject to the above observations, the Appeal filed by the Appellant-Insurance Company is dismissed.

51. However, on the facts and in the circumstances of the case, there will be no order as to costs.