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(2002) 2 ACC 591 : (2003) ACJ 1391

Jharkhand High Court

Case No: M.A. No. 79 of 2000 (R)

United India Insurance Company		APPELLANT
	Vs	
Ram Sawari Devi and Others		RESPONDENT

Date of Decision: Jan. 16, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 13
- Motor Vehicles Act, 1988 - Section 147(1), 149, 149(2), 15, 163

Citation: (2002) 2 ACC 591 : (2003) ACJ 1391

Hon'ble Judges: V.K. Gupta, C.J; D.N. Prasad, J

Bench: Division Bench

Advocate: Ram Kishore Pd., S. Karmakar and N.K. Singh, for the Appellant; S. Peprewal, J.N. Sengi and Amitabh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

The Court

1. Pursuant to our order dated 19th September, 2001, Mr. S.P. Roy, Advocate-Commissioner, has submitted his Report in the Court along with the statement of the witness, namely Kamaldeo Marandi.

2. A reading of the statement of the witness, Kamaldeo Marandi, does suggest that with respect to the driving licence No. 3634/ 88. there is some dispute, viz. whether the licence was issued and held validly and legally in the name of Md. Izhar (the driver of the offending Bus) son of Usman Mian or in the name of Gopal Mahato (Some other person) son of Kamal Mahato. We are purposely and deliberately avoiding to make any definite comment or expressing any opinion on this aspect of the matter at this stage because of the order that we propose to pass.

3. The stand of the appellant although has been that the driver of the offending vehicle did not possess a valid driving licence and because of the legal stipulation contained in Section 149 of the Motor Vehicle Act, 1988, the Insurance Company-appellant was absolved from its liability of paying the award amount to the claimants and on that account, therefore, the liability to pay the award amount rested squarely with the owner of the vehicle in question.

4. Reference is invited to the judgment of the Supreme Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . In this case their Lordships of the Supreme Court were dealing with a similar and identical situation where the contention of the Insurer before the Supreme Court was that because the driver of the offending vehicle did not possess a valid driving licence, the Insurance Company in terms of Section 149(2) of the Act was not liable to satisfy the award and pay the award amount to the claimants. Of course, in this case there was an added question as to whether once a driving licence as originally issiued was a forgery, could its renewal validate the forgery and could the effect of the renewal of such a originally forged licence be to legalise the licence and make it a valid one in the eyes of Law. On this question, their Lordships clearly held that what was originally a forgery would remain null and void for ever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery. The following observations in this judgment are apposite on this question. We quote,

"13. The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. Vs. Sucha Singh and Others, that renewal of a document which purports to be a driving licence, will probe even a forged document with validity on account of Section 15 of the Act, propound a very dangerous proposition. If that proposition is, allowed to stand as a legal principle, it may, no doubt, thrill counter-feiters the words over as they would be encouraged to manufactures fake documents in (sic). What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

5. After having, thus, come to the conclusion, unequivocally and categorically that the driving licence in question was a forgery and correspondingly, therefore, on returning a definite and positive finding that the driver of the offending vehicle did not possess a valid driving licence, their Lordships considered the scope, relevance and import of Sub-section (4) of Section 149 of the Act, the proviso following Sub-section (4) and Sub-section (5) of Section 149 of the Act, to consider the question, whether despite the Insurance Company being entitled to absolve its liability with respect to a condition occurring in Sub-section (2) of Section 149, was still liable to pay the award amount to the claimants. For ready reference, we reproduce herein below Section 149 of the Motor Vehicles Act, 1988, in its entirety. It reads thus :--

"149. Duty of insurers to satisfy judgments and awards against persons Insured in respect of third party risks.--(1) If, after a certificate of insurance has been issued under Sub-section (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 Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163-A) 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 cost and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(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 defend the action on any of the following grounds, namely :

(a) that there has been breach of a specified condition of the policy, being on of the following conditions, namely :

(1) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(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 disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment is referred in Sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is by virtue of the provisions of Section 13 of the Code of Civil Procedure. 1908 (5 of 1908), conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938)), and whether or not he is registered under the corresponding law of the reciprocating country shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in Sub-section (1), as if the judgment were given by a Court, in India :

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in Sub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the person insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respect such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect.

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expressions "material fact" and "Material particular" means, respectively a fact or particular of such nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in Sub-section (1) or in such judgment as is

referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

6. Dwelling on the ingredients of various parts of Sub-sections (4) & (5) of Section 149 and the proviso to Sub-section (4), their Lordships observed as under :--

"21. A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the Insured but for the provisions contained In chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the Insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this.--When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

7. Relying upon an earlier decision of the Supreme Court in the case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan. reported in AIR 1987 SC 1184 and the principle of law enumerated in a subsequent three Judge Bench of the judgment of the Supreme Court in the case of Sohan Lal Passi Vs. P. Sesh Reddy and others, their Lordships summed up the legal position thus :--

"25. The position can be summed up thus.--The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid license. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bono fide that the driver employee by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants-third parties) from the insured person."

8. Our case is exactly similar and identical to the aforesaid judgment of the Supreme Court. In our case also, there is a clear dispute and controversy with respect to the validity of the driving licence in question. In our case also, the Tribunal did not return any definite finding on this question because, erringly or otherwise it did not consider this question, perhaps more particularly because the Insurance Company was not very vigilant and careful in ensuring that it availed of the opportunity of leading evidence in the Tribunal. In fact, our order dated 19th September, 2001, does suggest that initially the Insurance Company might have been negligent in taking adequate steps in time for adducing evidence. That, however, should not deflect or detain us in so far as the question of the appellant- Insurance Company being asked to pay the award amount to the claimants, but, after such payment, to take steps for recovery of that amount from the insured-owner if it is ultimately found that the driver did not possess a valid driving licence. That is the ratio of the aforesaid Supreme Court judgment in the case of New India Assurance Co.. Shimla v. Kamla and Ors. and no other interpretation of the aforesaid judgment is either warranted or is possible.

9. Based on the aforesaid reasons, therefore, We ourselves sum up the legal position thus :--

"Whenever an Insurance Company is of the view, or it takes a defence or plea that the driver of the offending vehicle did not possess a valid driving licence at the time of the accident, undoubtedly such a defence/plea has to be taken to its logical conclusion and depending on the evidence led by the Insurance Company and any other evidence led in the trial, if it is found that in fact and indeed the driver did not possess a valid driving licence at the time of accident, in exercise of its right u/s 149(2) of the act, the Insurance Company may take steps to recover the award amount from the insured, depending upon any finding on this issue being given by the Tribunal on an appellate Court. Actually in given situation, the Tribunal itself may pass an order and issue a direction upon the insured to pay the award amount (which the claimants may have already actually received) to the Insurance Company. Pending such adjudication, however, and notwithstanding the raising or establishing of such a plea/defence, it is not open to the Insurance Company to avoid its liability qua the claimants and either ask for a finding that it is not liable to pay the award amount to the claimants, or even deferring such payment to the claimants pending adjudication of the issue relating to the validity of the licence if such adjudication for any reason is postponed or deferred."

10. In the result, this appeal in so far as the claimants are concerned is dismissed. The appellant insurer is directed to pay the entire award amount with interest and costs if any to the claimants (respondent Nos. 1 to 3 in this appeal). Whatever amount they have deposited in this count in this appeal shall be released by the Registrar General in favour of the claimants. The appellant Insurer shall pay the remainder of the amount within two months from today failing which they shall be liable to pay interest @ 18% p.a. on the delayed payment after the expiry of two months.

11. In order to determine the question about the legality and validity of the driving licence in question, We remit the matter to the Tribunal. In order effectively decide this question, the Tribunal is directed to summon the owner and the driver of the vehicle and permit the parties to lead evidence. Depending on the evidence that is adduced before the Tribunal, the Tribunal shall return a definite finding as to whether the driver of the offending vehicle at the time of accident possessed a valid driving licence or not and if not, direct the owner to pay the awarded amount to the Insurance Company. The proceedings in the Tribunal shall be concluded in all respects and final judgment pronounced on the aforesaid lines within one year from today.

12. The appeal is disposed of, with the aforesaid observations/directions. No order as to costs.

13. Appeal disposed of with directions.