AMRIT PAUL SINGH Vs TATA AIG GENERAL INSURANCE CO. LTD.

Court: SUPREME COURT OF INDIA

Date of Decision: May 17, 2018

Acts Referred: Motor Vehicles Act, 1988 â€" Section 166, 66, 149(4), 149(5), 2(30), 146
Motor Vehicles Act, 1939 â€" Section 149(2), 96(2)

Citation: AIR 2018 SC 2662 : (2018) 3 RCR(Civil) 131 : (2018) 6 SCR 838 : (2018) 7 SCC 558 : (2018) 7 Scale 502

Hon'ble Judges: DIPAK MISRA,CJ. , A M KHANWILKAR

Bench: Division Bench

Advocate: ABHISHEK ATREY

Final Decision: Dismissed

Judgement

Dipak Misra, CJI.

1.The legal representatives of the deceased, Jagir Singh, the husband of the second respondent, preferred a claim petition being MACT Case No. 70

of 2013 under Section 166 of the Motor Vehicles Act, 1988 (for brevity, Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢) before the Motor Accident Claims Tribunal, Pathankot (for

short, Ã¢â‚¬Ëœthe tribunalÃ¢â‚¬â„¢) claiming compensation to the tune of Rs. 36,00,000/Ã,. The claim petition was filed on the basis that on 19.02.2013, Jagir

Singh was travelling to Pathankot on his motor cycle and at that juncture, the offending truck bearing temporary registration No.PBÃ,06Ã,6894

belonging to the appellant No. 2 driven in a rash and negligent manner hit the motor cycle of the deceased as a result of which he sustained multiple

injuries, and eventually, succumbed to the same when being taken to the hospital. The claim put forth was sought to be sustained on many a basis

which need not be adverted to.

2.The insurer, the first respondent herein, opposed the claim on the ground that the vehicle in question was driven in violation of the terms of the

insurance policy and further the driver was not having a valid and effective driving license and, therefore, it was not obliged to indemnify the insured.

That apart, a stand was taken that the vehicle did not have the permit on the date of the accident. On behalf of the owner of the vehicle and driver,

assertions were made that the vehicle was insured with the first respondent as per the insurance policy, that the vehicle was registered and the driver

had the requisite driving licence. Additionally, copy of the route permit of the offending truck was brought on record.

3.The tribunal noted that the vehicle was purchased inSeptember 2012 and insured on 20.12.2012. It was registered on 26.02.2013. The accident, as

stated earlier, occurred on 19.02.2013. The tribunal, placing reliance on the decision rendered by this Court in National Insurance Co. Ltd. v. Challa

Bharathamma and others , held that the insurer was not liable and proceeded to quantify the amount of compensation and determined the same at Rs.

15,63,120/Ã,. The tribunal directed the amount to be paid by the insurer along with interest at the rate of 9% from the date of award till its realisation

and recover the same from the owner and driver of the vehicle. A further direction was given for attachment of the truck in question till the award

was satisfied.

4.The award dated 20.11.2014 passed by the tribunal was challenged in FAO No. 1702 of 2016 before the High Court of Punjab and Haryana at

Chandigarh. It was contended in appeal that the appellant No. 2, the owner of the offending vehicle, had deposited the necessary fees along with

application on 19.02.2013 for issue of route permit and the same was issued on 27.02.2013. It was further urged that when the owner of the vehicle

had already submitted the documents in the transport office for grant of permit along with the requisite fees, the tribunal was in error in holding that

the vehicle was being plied without a valid permit. In support of the submissions, reliance was placed upon Ashok Kumar Khemaka v. Oriental

Insurance Company Ltd. and other , National Insurance Company Limited v. Kamlesh Kaur and others and Moti Ram v. ICICI Lombard and others .

5.The High Court scrutinized Annexure AÃ,1 which was filed to justify the stand that the application for issue of the route permit was made to the

competent authority and, on a scrutiny of the same, came to hold that the owner had not been able to establish that he had submitted the application

for issue of permit before the accident. Referring to Section 66 of the Act and placing reliance on Challa Bharathamma case, the High Court opined

that even assuming that the owner had already applied for grant of the permit before the accident, the same would not entitle the owner to ply the

vehicle. It is worthy to note that the learned single Judge distinguished the decisions cited before him and, resultantly, confirmed the award of the

tribunal.

6.We have heard Mr. Sudhir Walia, learned counsel for the appellants, and Mr. Amit Kumar Singh, learned counsel for the respondentÃ‚â€‹insurer.

7.The conclusions recorded by the tribunal and further confirmed by the High Court clearly show that the accident occurred on 19.02.2013 and the

competent authority issued the permit on 27.02.2013. In this regard, Sections 2(28) and 2(31) of the Act that define Ã¢â‚¬Å“motor vehicleÃ¢â‚¬ or

Ã¢â‚¬Å“vehicleÃ¢â‚¬â€‹ and Ã¢â‚¬Å“permitÃ¢â‚¬â€‹ are reproduced below:Ã‚â€‹

Ã¢â‚¬Å“(28) Ã¢â‚¬Å“motor vehicleÃ¢â‚¬Â or Ã¢â‚¬Å“vehicleÃ¢â‚¬Â means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion

is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not

include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle

having less than four wheels fitted with engine capacity of not exceeding twentyÃ‚â€‹five cubic centimetres;

(31) Ã¢â‚¬Å“permitÃ¢â‚¬Â means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising

the use of a motor vehicle as a transport vehicle;Ã¢â‚¬â€‹

On a perusal of both the definitions, it is quite clear that a permit has to be issued by the competent authority under the Act for use of a motor vehicle

as a transport vehicle. The emphasis is on the words Ã¢â‚¬Å“useÃ¢â‚¬â€‹ as well as Ã¢â‚¬Å“transport vehicleÃ¢â‚¬â€‹.

8.Section 2(47) states that Ã¢â‚¬Å“transport vehicleÃ¢â‚¬Â means a public service vehicle, a goods carriage, an educational institution bus or a private service

vehicle. Section 66 stipulates necessity for permits. SubÃ‚section (1) thereof provides that no owner of a motor vehicle shall use or permit the use of

the vehicle as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods save in accordance

with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority. Various provisos

have been appended to the main provision stipulating conditions for use of the vehicle and purpose of carriage of goods vehicle. SubÃ‚section (2)

states that the holder of a goods carriage permit may use the vehicle for the drawing of any trailer or semiÃ‚trailer not owned by him, subject to such

conditions as may be prescribed. It is necessary to mention here that a proviso has been added by Act 54 of 1994 with effect from 14.11.1994

allowing the holder of a permit of any articulated vehicle to use the primeÃ‚mover of that articulated vehicle for any other semiÃ‚trailer. Section 2(2)

defines Ã¢â‚¬Å“articulated vehicleÃ¢â‚¬â€‹ to mean a motor vehicle to which a semiÃ‚â€‹trailer is attached.

9.It is apt to note here that subÃ‚section (3) of Section 66 carves out certain exceptions to subÃ‚section (1). The relevant part of subÃ‚section (3) is

extracted below:Ã‚â€‹

Ã¢â‚¬Å“(3) The provisions of subÃ‚â€‹section (1) shall not apply

(a)to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any

commercial enterprise;

(b)to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing,

road watering or conservancy purposes;

(c)to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d)to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e)to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f)to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf; (g) to any transport vehicle

used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance

with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(h)x x x x

(i)to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j)subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one

State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k)to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration

of the vehicle;

(l)x x x x

(m)to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is

required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n)to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o)to any transport vehicle which is subject to a hireÃ‚purchase, lease or hypothecation agreement and which owing to the default of the owner has

been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach

its destination; or

(p)to any transport vehicle while proceeding empty to any place for purpose of repair.Ã¢â‚¬â€‹

10.In the case at hand, the findings would show that the appellant No. 2 did not have a permit for the vehicle. There is no dispute that the vehicle

initially had a temporary registration and eventually the permanent registration. It is the stand of the appellants that the tribunal and the High Court did

not appreciate that the chasis of the vehicle was sent to the body where the body of the truck was fabricated and when the vehicle was driven out of

the work shop at which point of time it met with an accident. A contention has been made that the insurance policy was in force at the relevant time

and, hence, the insurer is legally obliged to indemnify the insured. A distinction has to be made between Ã¢â‚¬Å“route permitÃ¢â‚¬ and Ã¢â‚¬Å“permitÃ¢â‚¬ in the

context of Section 149 of the Act. Section 149(2) provides the grounds that can be taken as defence by the insurer. It enables the insurer to defend on

the ground that there has been breach of a specific condition of the policy, namely, (i) a condition that excludes the use of the vehicle, Ã, (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 sideÃ‚car being attached where the vehicle is a motor cycle. That apart, it also entitles the insurer to raise the issue pertaining to a condition

that excludes 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 that excludes liability for injury caused or contributed to by conditions of war, civil

war, riot or civil commotion. A further defence that can be availed of by the insurer is that the policy is void on the ground that it has been obtained by

nonÃ‚â€‹disclosure of the material fact or by representation of act which is false in the material particular.

11.On a perusal of the written statement filed by the owner and the driver, it is evident that the factum of accident having been caused by the vehicle

in question had been denied. That apart, there is also a denial of liability that relates to the manner in which the accident had occurred as alleged in

the claim petition. It was the specific assertion of the insurer before the tribunal that the vehicle was running in contravention of the provisions of the

Act, for it did not possess a route permit. The tribunal, on the basis of the materials brought on record to the effect that the route permit was issued on

27.02.2013 and the accident occurred on 19.02.2013, returned a finding that the vehicle in question did not have the permit. As stated earlier, the High

Court has affirmed the same.

12.Learned counsel for the appellants would submit that in the obtaining factual matrix, the breach would not exonerate the insurer from satisfying the

judgment and an award in terms of Section 149 of the Act. He has drawn inspiration from the decision of a threeÃ‚Judge Bench in National Insurance

Co. Ltd v. Swaran Singh and others . In the said case, the Court was dealing with the interpretation of Section 149(2)(a)(ii) visÃ‚Ã ƒ Ã‚vis the proviso

appended to subÃ‚sections (4) and (5) of Section 149 of the Act. The issue centrally pertained to the necessity of having a driving licence. After

adverting to various provisions, the Court also delved into the fundamental concept of third party right. Regard being had to the nature of the beneficial

legislation, the Court observed:Ã‚â€‹

Ã¢â‚¬Å“39.The question as to whether an insurer can avoid its liability in the event it raises a defence as envisaged in subÃ‚section (2) of Section 149 of

the Act corresponding to subsection (2) of Section 96 of the Motor Vehicles Act, 1939 had been the subjectmatter of decisions in a large number of

cases.Ã¢â‚¬â€‹

13.The Court posed the question as to whether an insurer can avoid its liability in the event it raised the defence as envisaged in subÃ‚section (2) of

Section 149 of the Act corresponding to subsection (2) of Section 96 of the Motor Vehicles Act, 1939. The Court analysed the language employed in

subÃ‚â€‹section (2) of Section 149, specifically clause (a), and, after scrutinizing the same and referring to various authorities, opined:Ã‚â€‹

Ã¢â‚¬Å“69.The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus,

required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of

policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi)

70.Apart from the above, we do not intendto lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement

inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of

insurance. Each case may pose a different problem which must be resolved having regard to a large number of factors governing the case including

conduct of parties as regards duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the

owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hardÃ‚andÃ‚â€■

fast rule can, therefor, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the

insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of the contract of

insurance, on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis

of the materials available on records.

71.In the aforementioned backdrop, theprovisions of subÃ‚sections (4) and (5) of Section 149 of the Motor Vehicles Act, 1988 may be considered as

to the liability of the insurer to satisfy the decree at the first instance.

83.SubÃ‚section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable

to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company

is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to

the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect

to. Subsection (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is

in negative language may now be noticed. The said provision must be read with subÃ‚section (1) thereof. The right to avoid liability in terms of

subsection (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a

defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case,

the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two

matters stand apart and require contextual reading.Ã¢â‚¬â€‹

14.We may fruitfully note that the threeÃ‚Judge Bench adverted to situations where the driver does not have a licence and the same has been allowed

to be driven by the owner of the vehicle by such person, the insurer would be entitled to succeed in defence and avoid liability, but the position would

be different where the disputed question of fact arises as to whether the driver had a valid licence and where the owner of the vehicle committed a

breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not

have a valid driving licence.

15.The Court held that if, on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like

mechanical failures and similar other causes having no nexus with the driver not possessing the requisite type of licence, the insurer will not be allowed

to avoid its liability merely for technical breach of conditions concerning driving licence. That apart, minor and inconsequential deviations with regard

to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to third parties. The other category of cases

that the Court addressed to included cases where the licence of the driver is found to be fake. In that context, the Court expressed its general

agreement with United India Insurance Co. Limited v. Lehru and stated thus:Ã‚â€‹

Ã¢â‚¬Å“92. Ã¢â‚¬Â¦ In Lehru case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend

to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the

insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners

to be absolved from any liability whatsoever ..Ã¢â‚¬â€‹

16.The threeÃ‚â€‹Judge Bench summed up its conclusions and we think it appropriate to reproduce the relevant part of the same:Ã‚â€‹

Ã¢â‚¬Å“110. (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in subÃ‚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.

x x x x

(vi)Even where the insurer is able to provebreach 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 Ã¢â‚¬Å“the rule of main purposeÃ¢â‚¬Â and the concept of Ã¢â‚¬Å“fundamental breachÃ¢â‚¬Â to allow

defences available to the insurer under Section 149(2) of the Act.

(vii)The question, as to whether the ownerhas 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.Ã¢â‚¬â€‹

17.Learned counsel for the appellants would submit that there has been no fundamental breach of the policy conditions. In this context, we may

profitably refer to the decision in Challa Bharathamma (supra) wherein a twoÃ‚Judge Bench squarely dealt with the absence of a permit and ruled that

plying a vehicle without a permit is an infraction and insurer is not liable.

18.In Lakhmi Chand v. Reliance General Insurance , the Court was concerned with an order passed by the National Consumer Disputes Redressal

Commission (NCDRC) that had declined the relief to the petitioner therein. The insurer in the said case had taken the plea that the complainant had

violated the terms and conditions of the policy, for five passengers were travelling in the goods carrying vehicle at the time of the accident, whereas

the permitted seating capacity of the motor vehicle of the appellant was only 1 + 1. The twoÃ‚Judge Bench referred to Oriental Insurance Co. Ltd. v.

Meena Variyal and others and expressed the view that in order to avoid liability, the insurer must establish that there was breach on the part of the

insured.

19.The obtaining fact situation is sought to be equated with the factual score in the said case. In this regard, it is useful to refer to the Bench decision

in HDFC Bank Limited v. Reshma and others . The issue that arose before the Court was whether the financier was liable to pay the compensation

or it was the liability of the borrower. The tribunal had returned the finding that the duty of the financier was to see that the borrower did not neglect

to get the vehicle insured and, therefore, it was jointly and severally liable along with the owner. The High Court had concurred with the said

conclusion. The Court referred to Purnya Kala Devi v. State of Assam and other that has dealt with the definition of the term Ã¢â‚¬Å“ownerÃ¢â‚¬ as

contained in Section 2(30) of the Act. In the said case, the vehicle in question was under the requisition of the State of Assam under the provisions of

law. In that context, the Court has expressed that:Ã‚â€‹

Ã¢â‚¬Å“16. Ã¢â‚¬Â¦ The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent 1 State of

Assam under the provisions of the Assam Act. Therefore, Respondent 1 was squarely covered under the definition of Ã¢â‚¬ËœownerÃ¢â‚¬â„¢ as contained in

Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of Ã¢â‚¬ËœownerÃ¢â‚¬â„¢ a

person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hireÃ‚purchase agreement to the effect

that a person in control and possession of the vehicle should be construed as the Ã¢â‚¬ËœownerÃ¢â‚¬â„¢ and not alone the registered owner. The High Court

further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his

possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow

any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the

State Government has violated the statutory provisions of the 1988 Act.Ã¢â‚¬â€‹

20.Be it noted, in the said case, the liability was fixed on the State keeping in view the legislative intention behind Section 146 of the Act, no person

shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy as that is the mandatory statutory

requirement under the Act. Emphasis was laid on possession and control of the vehicle and accordingly liability was fixed on the State of Assam.

21.In HDFC Bank Limited (supra), the threeÃ‚Judge Bench opined that the hypothecation agreement did not convey that the appellant financier had

become the owner and was in control and possession of the vehicle. It was the absolute fault of the respondent No. 2 to take the vehicle from the

dealer without full payment of the insurance, more so when nothing had been brought on record that the said fact was known to the appellant financier

or that it was done in collusion with the financier.

22. The Court held that when the intention of the legislature is quite clear to the effect that a registered owner of the vehicle should not be held liable if

the vehicle is not in his possession and control and there was evidence on record that the respondent No. 2, plied the vehicle without the insurance in

violation of the statutory provision contained in Section 146 of the Act, the High Court could not have mulcted the liability on the financier and finally,

the financer was absolved of the liability.

23.In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a

permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had

temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be

pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public

place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66.

The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation

of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that

regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not

require the wisdom of the Ã¢â‚¬Å“TripitakaÃ¢â‚¬, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been

brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore,

the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the

stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the

principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.

24.In view of the aforesaid analysis, we do not perceive any merit in the appeal and, accordingly, the same stands dismissed without any order as to

costs.