2023 INSC 954

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 19992 OF 2023

IFFCO Tokio General Insurance Co. Ltd. … Petitioner

Versus

Geeta Devi and others. … Respondents

O R D E R

SANJAY KUMAR, J

1. IFFCO Tokio General Insurance Co. Ltd. seeks to assail the order dated 11.05.2023 of the Delhi High Court in MAC. APP. No. 914 of 2019. Thereby, the High Court reversed the Award dated 06.07.2018 passed by the Motor Accident Claims Tribunal, Rohini Courts, Delhi, in MAC Petition No. 4415 of 2016, to the extent it granted the right of recovery to the petitioner-insurance company. Aggrieved by the denial of such right of recovery, the petitioner-insurance company is before this Court.

2. Facts, to the extent germane, may be noted: One Dharambir suffered fatal injuries on 09.05.2010, when the Tempo vehicle bearing Registration No. HR69D-0246, driven in a rash and negligent manner, hit his motorcycle. His dependents, viz., his parents, widow and children, approached the Motor Accident Claims Tribunal, Rohini Courts, Delhi, under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act of 1988'), seeking compensation. Ujay Pal, the driver of the Tempo vehicle; Netra Pal Singh, the owner of the vehicle, who died during the pendency of the case and was represented by his legal representatives, viz., his mother, widow and minor son; and the petitioner-insurance company were arrayed as the respondents in their claim petition. By Award dated 06.07.2018, the Tribunal held in their favour and awarded them a sum of ₹13,70,000/- as compensation with interest. However, the Tribunal found that the driver of the Tempo had a fake driving licence and opined that the petitioner-insurance company would not be liable to pay the compensation. The Tribunal, therefore, directed the petitioner-insurance company to deposit the awarded amount with liberty to recover the same from the present owners of the Tempo. Aggrieved by this finding, the owners of the vehicle filed an appeal in MAC. APP. No. 914 of 2019 before the Delhi High Court, resulting in the impugned order dated 11.05.2023.

3. The record reflects that Ujay Pal, the driver of the vehicle, had produced a driving licence issued at Mathura at the time of his employment and it was only after the accident that it came to light that the said licence was not a genuine one. The widow of Netra Pal Singh, the deceased vehicle owner, stated before the Tribunal that her husband had told her he had taken a driving skill test after seeing the driving licence produced by Ujay Pal, before employing him as a driver. However, the Record Clerk from the ARTO, Mathura, testified that, as per their record, the licence produced by Ujay Pal was fake as that licence number related to some other person. In view of this evidence, the Tribunal held that the petitioner-insurance company would not be liable, owing to a breach of the terms and conditions of the insurance policy by the vehicle owner, and granted the right of recovery to the petitioner-insurance company. However, in appeal, the High Court opined that the petitioner-insurance company had neither pleaded nor proved that the deceased vehicle owner did not take adequate steps to verify the genuineness of the driving licence and in the absence of such a plea on its part, the Tribunal could not have concluded that there was a breach of the terms and conditions of the insurance policy. The High Court, therefore, held that the petitioner-insurance company did not have the right to recover the compensation from the vehicle owners.

4. It would be apposite at this stage to note the statutory milieu pertinent to this case. Section 149 of the Act of 1988, to the extent relevant, reads as under: -

> '149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -
>
> (1) …..
>
> (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,……; 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) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely: -
>
> (i) ……; 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……'

5. On behalf of the petitioner-insurance company, it was argued that the hearsay evidence of the widow of the vehicle owner was accepted as the biblical truth by the High Court without any corroboration thereof. This argument was advanced in the context of the deceased vehicle owner

having taken a driving skill test of Ujay Pal prior to his employment as a driver. It is pointed out that his widow admitted that she had not seen any such test being taken and that her late husband had merely told her so and, further, the inescapable fact also remains that the driving licence of Ujay Pal, the driver of the vehicle, was a fake one.

6. The argument with respect to the driving skill test does not merit acceptance as the insurance policy in question admittedly did not postulate that a driving skill test should compulsorily be taken before employing a chauffeur to drive the insured vehicle. The relevant condition in the insurance policy, titled 'Driver Clause', reads as follows:

> 'Any person including insured: provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.'

There is, thus, no mandate in the statutory provision or the above clause that a driving skill test should be undertaken without fail before employing a driver. Therefore, it is not open to the petitioner-insurance company to cite the same as a breach of the terms and conditions of the policy. In fact, there was no such term or condition in the policy.

7. As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake license, it may be noted that neither Section 149(2)(a)(ii) of the Act of 1988 nor the 'Driver Clause' in the subject

insurance policy provide that the owner of the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the concerned transport authorities. Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly competent authority, the validity of which has not expired. It would be wholly impracticable for every person employing a driver to expect the transport authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions. In fact, no such mandatory condition is provided in any car insurance policy and it is not open to the petitioner-insurance company, which also did not prescribe such a stringent condition, to cite the failure of the deceased vehicle owner to get Ujay Pal's driving licence checked with the RTO as a reason to disclaim liability under the insurance policy.

8. In effect and in consequence, the petitioner-insurance company cannot blithely claim that the deceased vehicle owner did not conduct due diligence while employing Ujay Pal as a driver, by now insisting upon a condition which was neither prescribed in the statute nor in the insurance policy. More so, an unrealistic condition that every person employing a

driver must get the driving licence of such driver verified and confirmed by the RTO concerned, irrespective of the actual necessity to do so.

9. Useful reference in this regard may be made to ***Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and others***[1], wherein this Court, in the context of Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, which is *in pari materia* with Section 149(2)(a)(ii) of the Act of 1988, observed as under: -

> *'14*. Section 96(2)(*b*)(*ii*) extends immunity to the insurance company if a breach is committed of the 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 from holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation' (see *Collins English Dictionary*). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person

[1] (1987) 2 SCC 654

> who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed Driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed Driver and has placed the vehicle in charge of a licensed Driver, with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.'

10. The correctness of the aforesaid decision was considered by a 3-Judge Bench of this Court in ***Sohan Lal Passi vs. P. Sesh Reddy and others***[2] and it was duly approved, with the following observations: -

> 'In other words, once there has been a contravention of the condition prescribed in sub-section (2)(*b*)(*ii*) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(*b*)(*ii*) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person

[2] (1996) 5 SCC 21

> who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed Driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the Driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(*b*) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed Driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96.'

11. Thereafter, in ***National Insurance Co. Ltd. vs. Swaran Singh and others***[3], a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section

[3] (2004) 3 SCC 297

149(2)(a) opened with the words: 'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer *res integra* that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

12. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether

the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in ***United India Insurance Co. Ltd. vs. Lehru and others***[4] was considered and the Bench observed that the *ratio* therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in ***Lehru*** *(supra)* meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:

[4] (2003) 3 SCC 338

'(*iii*) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-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.

(*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 vehicle; 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 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 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 under Section 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.'

13. More recently, in ***Ram Chandra Singh vs. Rajaram and others***[5], the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, *per se*, would not absolve the insurer.

14. Applying the aforestated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of

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[5] (2018) 8 SCC 799

the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof.

15. As already pointed out *supra*, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The

impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law.

16. These legal propositions being so well settled, it is indeed shocking that insurance companies deem it appropriate to raise such pleas as a matter of course, without reference to the facts of the given case and/or the evidence available therein, and also consider it necessary to carry such matters in appeal till the last forum, unmindful of the wastage of valuable curial time and effort!

The special leave petition is accordingly dismissed.

……..,J
(C.T. RAVIKUMAR)

……..,J
(SANJAY KUMAR)

October 30, 2023;
New Delhi.