United India Insurance Co. Ltd vs Rakesh Kumar Arora & Ors on 24 September, 2008

Equivalent citations: AIR 2009 SUPREME COURT 24, 2008 (13) SCC 298, 2008 AIR SCW 6872, 2009 (1) AIR JHAR R 840, 2009 (3) SCC(CRI) 601, (2008) 71 ALLINDCAS 80 (SC), 2008 (13) SCALE 35, (2008) 41 OCR 696, (2008) 13 SCALE 35, (2008) 4 RECCIVR 684, (2008) 4 PUN LR 758, (2008) 4 RAJ LW 3100, (2009) 1 TAC 364, (2009) 3 ANDHLD 136, (2008) 4 ACC 709, (2008) 4 ACJ 2855, (2008) 73 ALL LR 650, (2008) 4 ALL WC 3823, (2009) 1 CIVLJ 591

Bench: Cyriac Joseph, S.B. Sinha

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5876 OF 2008
(Arising out of SLP(C) No. 23751/2004)

UNITED INDIA INSURANCE CO.LTD. ...Appellant(s)

Versus

RAKESH KUMAR ARORA & ORS. ...Respondent(s)

ORDER

Delay condoned.

Substitution allowed.

Application for setting aside the abatement is allowed. Leave granted.

This appeal is directed against the judgment and order dated 20.5.2004 passed by a Division Bench of the Punjab and Haryana High court at Chandigarh whereby and whereunder the Letters Patent Appeal preferred by the appellant herein from the judgment and order dated 9.10.2000 passed by the learned Single Judge in the said F.A.No. 2627 of 1998 was dismissed.

One Balwant Singh filed an application claiming a sum of Rs. 10,00,000/- (Rupees Ten Lakhs) by way of compensation for death of his son Virender Singh in an accident which took place on 5.2.1997. The owner of the vehicle contested the said claim. Appellant herein, inter alia, raised a contention before the Tribunal that the driver of the vehicle, namely, Karan Arora was a minor on the date of the accident and was not holding a valid and effective driving licence and thus it was not

liable to reimburse the owner of the vehicle.

In view of the aforementioned stand taken by the appellant inter alia the following issue was framed:

> Whether the accident resulting in death of Virender Singh alias Rinku, took place due to rash and negligent driving of car bearing registration No. HR41/3347 by respondent driver Karan Arora?
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> While determining the said issue the learned Tribunal opined that the Insurance Company was not liable for payment of the amount of compensation to the claimants, stating:
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> "From the bare perusal of the evidence of respondent driver Karan Arora appearing as RW1, which has been reproduced almost in its entirety in para nos. 19 to 22 at pages 10 to 13 of this award, it becomes absolutely clear that he was aged about 15 years, he does not know driving; he was born on 7.8.1983 and that he is not having any driving licence till 25.7.1998, when his statement was recorded. In these circumstances, I return a firm finding that respondent driver Karan Arora had no valid/effective driving licence on the day of the accident i.e. 5.2.1997."

An appeal under Sec.173 of the Motor Vehicles Act 1988 was filed before the High court which was marked as First Appeal from Order No.2627/1998. A learned single Judge of the said Court allowed the said appeal, holding:

> "After considering the rival contentions of the parties, I am of the opinion that the material point for determination is whether there was any breach of contract between the owner of the vehicle and the insurance company. If the breach is committed on behalf of the vehicle, certainly the Insurance Company has a case. In order to bring the case within the mischief of "breach" it has to be proved that there was a willful default on the part of the insured. I have already stated above that no sane father would like to give the custody or keys of the vehicle to his minor son aged 14 years much less to the friend of the minor. Had Rakesh Kumar Arora parted the possession of the vehicle to his son he would have contemplated very easily that by doing so he would have incited the trouble. The Hon'ble Supreme Court 1987 while interpreting the expression "Breach" came to the conclusion that if it is proved on the record that the owner of the vehicle had done every thing his power to keep, honour, and fulfil the promise, in such a situation he cannot be held guilty of a deliberate breach. There is no evidence on the record to indicate that the owner of the vehicle parted the keys of the vehicle to his son deliberately or knowingly. If in the absence of the father son takes the keys of the vehicle and drives the vehicle for a fun and caused accident, it cannot be said that there was an express or implied consent on the part of the owner. The judgments which have been relied upon by the learned counsel for the Insurance Company may not be any assistance to him for the simple reason that in the said judgments it has proved prima facie that there was a breach of contract on the part of

the insured."

A Letters Patent Appeal was preferred thereagainst, which was entertained.

The Division Bench of the High Court by reason of the impugned judgment dismissed the said appeal, only relying upon or on the basis of some precedent, viz. V. Mepherson and another vs. Shiv Charan Singh and others 1998 ACJ 601 and Skandia Insurance Company Limited vs. Kokilaben Chandravadan and others 1987 ACJ 411.

Mr. K.L. Nandram, learned counsel appearing on behalf of the appellant contended that keeping in view the provisions of Secs.4 and 5 of the Motor Vehicles Act 1988, the question of any willful default on the part of the owner is wholly irrelevant in this case as neither a licence could be granted in favour of minor nor in fact the driver of the vehicle was holding a valid licence. Reliance in this behalf has been placed on National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors. (2008 (8) SCALE 500.

No body appears on behalf of respondent No.1.

The learned counsel appearing on behalf of the proforma respondent- Smt. Kaushalya Devi submitted before us that she has already received the amount of compensation which had been deposited by the appellant.

Section 4 of the Motor Vehicles Act prohibits driving of a vehicle by any person under the age of eighteen years in any public place. Section 5 of the Act imposes a statutory responsibility upon the owners of the motor vehicles not to cause or permit any person who does not satisfy the provisions of Sec.3 or 4 to drive the vehicle.

The vehicle in question admittedly was being driven by Karan Arora who was aged about fifteen years. The Tribunal, as noticed hereinbefore, in our opinion, rightly held that Karan Arora did not hold any valid licence on the date of accident, namely 5.2.1997.

The learned single Judge as also the Division Bench of the High Court did not put unto themselves a correct question of law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.

The High Court did not advert to itself the provisions of Sections 4 and 5 of the Motor Vehicles Act and thus misdirected itself in law.

This aspect of the matter has been considered by this Court in Oriental Insurance Co.Ltd. vs. Prithvi Raj (2008 (1) SCALE 727) wherein upon taking into consideration a large number of decisions, it was held that the Insurance Company was not liable, stating :

> "In the instant case, the State Commission has categorically found that the evidence on record clearly established that the licensing authority had not issued any license,

> as was claimed by the Driver and the respondent. The evidence of Shri A.V.V.Rajan, Junior Assistant of the Office of the Jt.
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> Commissioner & Secretary, RTA, Hyderabad who produced the official records clearly established that no driving license was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard."

Yet again this court in National Insurance Co.Ltd. vs. Kaushalaya Dvi & Ors. 2008 (8) SCALE 500 took the same view stating:

> "The provisions relating to the necessity of having a licence to drive a vehicle is contained in Section 3,4 and 10 of the Act. As various aspects of the said provisions, vis-a-vis, the liability of the Insurance Company to reimburse the owner in respect of a claim of a third party as provided in Section 149 thereof have been dealt with in several decisions, it is not necessary for us to reiterate the same once over again. Suffice it to notice some of the precedents operating in the field.
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> In National Insurance Co. Ltd. vs. Swaran Singh & Ors. [(2004) 3 SCC 297] this Court held:
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> "88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.
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> 89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section."

It was furthermore observed:

> "90. We have construed and determined the scope of sub- clause (ii) of sub-section (2) of Section 149 of the Act, Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

> 91. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court."

The decision in Swaran Singh, however, was held to be not applicable in relation to the owner or a passenger of a vehicle which is insured."

In view of the authoritative pronouncement of this Court as noticed hereinbefore, the impugned judgment cannot be sustained. It is set aside accordingly and that of the learned Tribunal is restored. However, keeping in view the admitted fact that as no stay had been granted by the High Court the appellant has deposited the entire amount which has since been withdrawn by the claimant-respondent; we direct that the appellant shall be entitled to recover the amount in question from the owner of the vehicle, namely, respondent No.1.

The appeal is allowed accordingly.

No costs.

.....J. (S.B. SINHA) .....J. (CYRIAC JOSEPH) New Delhi, September 24, 2008.