The Oriental Insurance Co. Ltd vs Sona & Ors on 22 December, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

$~17
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ MAC.APP. 275/2020 & CM APPL. 34001/2020
THE ORIENTAL INSURANCE CO. LTD.

Through: Mr. S.P. Jain, Advocate.
versus

SONA & ORS.
Through: Mr. Varun Sarin, Advocate

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 22.12.2020 The hearing was conducted through video conferencing. CM APPL. 34000/2020 (Exemption) 1 Exemption allowed, subject to all just exceptions. 2 The application stands disposed-off.

MAC.APP. 275/2020 & CM APPL. 34001/2020 (Stay) 3 The award of compensation towards 'love and affection' is impugned on the ground that it would not be payable to the claimants in terms of the decision of the Supreme Court in United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors. in Civil Appeal No. 2705 of 2020 dated 30.06.2020. Accordingly, Rs.3.5 lacs shall be deducted from the awarded amount i.e. Rs.37,55,051/-. 4 The appellant seeks the right of recovery against the driver and owner of the vehicle. The impugned order has dealt with the issue as under:

> " 24. LIABILITY As stated above, though R-3/Insurance Company in its reply has admitted the issuance and existence of a valid policy of insurance by them in respect of above offending vehicle in the name of R-2, but it is their case that the terms and conditions thereof stood violated as the offending vehicle was being driven without a valid permit and fitness certificate at the time of accident. To substantiate this fact, they have also examined on record their official namely Ms. Neelam Rani as R3W1 and she has tendered on record her examination-in-chief by way of an affidavit Ex. R3W1/1. She has further tendered on record a copy of policy of insurance of the said vehicle as Ex. R3W1/A, copy of legal notice given to R-1 and R-2 for producing the relevant documents in respect of offending vehicle as Ex. R3W1/B and its postal receipts as Ex. R3W1/C1 to Ex. R3W1/C3 (it is observed that there are only two postal receipts and the same should have been tendered as Ex. R3W1/C1 and Ex. R3W1/C2

instead of Ex. R3W1/C1 to Ex. R3W1/C3 and further exhibit marks on these receipts as Ex. R3W2/C2 to Ex. R3W2/C3 were also wrongly placed as the witness was numbered as R3W1 and not R3W2). She has also specifically deposed in the said affidavit that despite service of above notice, the relevant documents including the permit and fitness certificate of the offending vehicle were not produced by the concerned respondents.

Ld. Counsel for R-3/Insurance Company has argued that their above plea is further substantiated by the contents of DAR documents, which not only have been relied upon by the petitioners as Ex. PW1/1 (colly), but also relied upon by this witness. It is a matter of record that Sections 66/192 and 96/192 of the MV Act were invoked by IO of the said chargesheet due to these violations. It is further argued that R-2 being owner of the said vehicle has also not produced on record of this tribunal a copy of the above documents, i.e. permit and fitness certificate of his vehicle. Hence, he has submitted that R-3/Insurance Company be either discharged from its liability or it be given a right of recovery of compensation amount from the other respondents.

However, on this aspect, reference can be made to judgment of the Full Bench of the Hon'ble High Court of Kerala in the case of Augustine V.M. Vs. Ayyappankutty & Ors., MACA Nos. 2526/2009 and 2507/ 2010 decided on 04.03.2015, wherein it has been held that if the offending vehicle is used for the same purposes as authorized by the permit or fitness certificate, then the insurer cannot take defence of Section 149 (2) (a) (i) (c) of the MV Act as the non-renewal of permit or fitness certificate by its owner is a technical violation only and it does not entitle the Insurance Co. to the recovery rights. The relevant observations made by their Lordships in the above case are as under:-

"16. In order to enable the insurance company to take up the defence under Section 149 (2) (a) (i) (c) it must be shown that the use of the transport vehicle was for a purpose not allowed by the permit under which the vehicle was used.

Instances may occur where transport vehicles intended or permitted for a particular purpose are used for another purpose. For example, if a transport vehicle permitted only for carrying goods, carries passengers and capsizes en route causing injuries to the passengers, certainly, the insurer can taken up the defence under Section 149 (2) (a) (i)

(c). However, if such a vehicle is used only for the permitted purpose, and the accident occurs when the permit or fitness certificate ceased to exit, it amounts to a technical violation only, which will not entitle the insurer to disown the liability to third parties. For avoiding the liability relying on Section 149 (2)

(a) (i) (c), the insurer should plead and prove that the offending vehicle was used for a purpose not authorized by the permit. It is true, that the vehicles in these cases ceased to have fitness certificate as well as permit on their expiry. We are unable to agree that the breach of condition in respect of

non-

renewal of certificate of fitness or permit would entitle the insurer to take up the defence under Section 149 (2) (a) (i) (c) of the Act. We are of the definite view that Thara v. Syamala (cited supra) does not lay down the correct law. In both these cases, there is no contention by the insurer that the vehicles were used for a purpose not allowed by the permit. There is nothing on evidence to show that the breaches alleged were fundamental breaches which have contributed to the cause of the accident. In the absence of any evidence to show that the breach was so fundamental as to lead to the accident, there cannot be an automatic direction to allow the insurance company to recover the amount from the owner. Therefore, on facts also the appellants are entitled to succeed."

Moreover, the non-renewal of permit or fitness etc. of a vehicle cannot be considered to be a fundamental breach of the terms and conditions of the insurance policy if the vehicle is being used for the same purpose for which it has been authorized to be used. To avoid its liability the insurance co. must prove that the breach being alleged was fundamental in nature. Reference in this regard can also be made to three judges bench decision of the Hon'ble Supreme Court in case of Lakhmi Chand vs. Reliance General Insurance (2016) 3 SCC 100.

In the present case, it is not the claim of R3/Insurance Company that the offending vehicle was registered or insured as a private vehicle and not as a goods vehicle and rather, the vehicle particulars obtained by IO from the concerned Transport Authority during investigation of the case, which are a part of the DAR documents relied upon by both the parties, show that the vehicle was registered as a light good vehicle and also had a national permit and a fitness to be driven as such.

Hence, in view of above, R-3 is not held entitled to a discharge or even to any recovery rights against R-1 & R-2 and it is directed to deposit the above award amounts with the UCO Bank, Patiala House Court Branch, alongwith interest @ 9% per annum, by way of crossed cheques/DDs in name of the petitioners within 30 days from today failing which it will be liable to pay interest at the rate of 12% per annum for the period of delay. In case even after passage of 90 days from today, R-3 fails to deposit this compensation with proportionate interest, in that event, in light of the judgment of the Hon'ble High Court of Delhi in the case of New India Assurance Company Limited Vs. Kashmiri Lal, 2007 ACJ 688, this compensation shall be recovered by attaching the bank account of the insurance company with a cost of Rs.5,000/-.

R-3 shall inform the claimants and their counsels through registered post that the cheques of the awarded amounts are being deposited so as to facilitate them to collect their cheques."

5 The learned counsel for the appellant submits that in terms of the dicta of the Supreme Court in M.S. Middle High School v. HDFC Ergo 2017 SCC OnLine SC 1845 and Anu Bhanvara v. IFFCO Tokio 2019 SCC OnLine SC 1006, the right of recovery ought to be granted against a driver who drives a vehicle without fitness certificate or road permit, as well as the owner who permits his vehicle to be driven as such.

6 Issue notice to R-8 and R-9 through approved courier, Speed Post, WhatsApp, e-mail, SMS and through other viable electronic modes, through counsel as well, returnable on 25.05.2021. 7 The appellant shall deposit the awarded amount before the Tribunal within three weeks after deducting Rs.3.5 lacs in terms of the above to be released to the beneficiaries of the award in terms of the scheme of disbursement specified therein.

8 The order be uploaded on the website forthwith.

NAJMI WAZIRI, J DECEMBER 22, 2020 RW