Lal Chand vs Oriental Insurance Co. Ltd on 22 August, 2006

Author: Ar. Lakshmanan

Bench: Ar. Lakshmanan, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  3623 of 2006

PETITIONER:
Lal Chand

RESPONDENT:
Oriental Insurance Co. Ltd.

DATE OF JUDGMENT: 22/08/2006

BENCH:
Dr. AR. LAKSHMANAN & TARUN CHATTERJEE

JUDGMENT:
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JUDGMENT (@ SLP(C)NO.20002 of 2004) Dr. AR. Lakshmanan, J.

Delay condoned. Leave granted.

Heard learned counsel appearing on either side. This appeal is directed against the final judgment and order dated 6.5.2003 passed by the High Court of Punjab & Haryana at Chandigarh in F.A.O. No.1587 of 2002. The appellant before us is the owner of the vehicle, a truck. The respondent is the insurer of the vehicle. The vehicle met with an accident on 11.10.1998. The claim petition was filed by the claimants before the Tribunal. Accepting their claim, the Tribunal awarded compensation of Rs.2.70 lakhs along with interest. The Tribunal held that the accident took place due to rash and negligent driving of the driver Mam Chand and that the appellant-owner had not committed any breach of the terms and condition of the insurance policy and that the Insurance Company was liable to make the payment of compensation amount to the claimants as insurer of the truck.

The Insurance Company, being aggrieved with the award passed by the Tribunal, filed an appeal before the High Court. The High Court modified the order passed by the Tribunal and directed that the Insurance Company would be entitled to recover the amount from the owner of the offending truck as per the law laid down by this Court in Kamla's case, reported in 2001 (4) SCC 342. The High Court also held that the appellant had contravened the terms and conditions of the insurance policy as the Driving licence was not issued by the Licensing Authority, Hyderabad. The Insurance Company filed application under Sec.174 of Motors Vehicle Act for recovery of amount of Rs.3,27,890/- paid as compensation to the claimants by the Insurance Company. The appellant herein filed the reply to the application in which he averred that the application for recovery of compensation paid to the claimants by the Insurance Company is not maintainable as the rights of

the parties have not been determined by the civil court. The Tribunal held that the Insurance Company is entitled to recover the money from the petitioner through the execution application and ordered to issue a certificate of recovery of amount of Rs.3,27,890/- under section 174 of Motor Vehicles Act and the same be sent to the District Collector.

Aggrieved against the order passed by the High Court, the appellant has preferred the above appeal in this Court. The above appeal was filed with a delay of 339 days. This Court issued notice on the special leave petition as well as on the application for condonation of delay. After notice, the respondent Insurance Company has also filed a counter affidavit and the matter was listed today for final hearing. At this stage no purpose would be served to dismiss the civil appeal on the ground of delay in filing the appeal. Since the notice was ordered on special leave petition and on the delay and the counter affidavit has already been filed, we condone the delay and heard the learned counsel appearing on either side, on merits of the rival claims.

Mr. Mahabir Singh, learned Senior Counsel appearing for the appellant submitted that the High Court has not noticed the finding of the Tribunal, which is based on evidence, and that the Tribunal had recorded the evidence and had given its award after examining the evidence on record and the material facts, and therefore, the said considered order should not have been set aside by the High Court. He would further submit that the owner of the vehicle has taken adequate care and caution to verify the genuineness of the licence held by the driver. The Insurance Company also did not lead any evidence to show that due and adequate care was not taken by the owner. He would further submit that the High Court has failed to appreciate that there was no evidence that the appellant, who had employed the driver, had knowledge that the driver was not holding a valid driving licence. Our attention was also drawn to the evidence tendered. The appellant was examined as RW/1. He deposed that he was the owner of the truck in question and that he had employed Mam Chand as driver of this truck in August, 1998 and had checked his driving licence. He would further depose that he had also taken his driving test and satisfied that the driver was fully competent and conversant to the driving. It is further stated that the driver would not have been employed if he had no driving licence. In the cross-examination, nothing has been elicited from the appellant to discredit his testimony as RW/1.

Mr. M.K. Dua, learned counsel appearing for the respondent-Insurance Company submitted that the appellant has no case on merits as the order of the High Court is well supported by the law laid down by this Court in the case of New India Assurance Co. Ltd. versus Kamla & Ors., etc., reported in 2004(4)SCC 342. He would further submit that the licence issued to the driver was found to be fake and the High Court gave categorical finding that the driver was not holding a valid driving licence and that the appellant committed breach of terms and conditions of the insurance policy. He, therefore, submitted that the order passed by the High Court is not liable to be interfered with.

We have perused the pleadings and the orders passed by the Tribunal and also of the High Court and the annexures filed along with the appeal. This Court in the case of United India Insurance Co. Ltd. versus Lehru & ors., reported in 2003 (3) SCC 338, in paragraph 20 has observed that where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). He will, therefore, have to check whether the driver has a

driving licence and if the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take test of the driver, and if he finds that the driver is competent to drive the vehicle, he will hire the driver.

In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would not then be absloved of its liability.

Another decision rendered by a three Judges Bench of this Court in the case of National Insurance Co. Ltd. versus Swaran Singh & Ors, reported in 2004 (3) SCC 297, can also be usefully referred to in the present context. This Court in para 110 of this judgment gave the summary of their findings to the various issues as raised in those petitions. We are concerned only with sub para (iii) of paragraph 110. The said sub para (iii) reads thus:

> "....
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> (iii) The breach of policy condition e.g. Disqualification of the driver or invalid driving licence of the driver, as contained in sub-

section (1)(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."

As observed in the above paragraph, the insurer, namely the Insurance Company, has to prove that the insured, namely the owner of the vehicle, 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 point of time.

We respectfully agree and following the above ruling, we allow the appeal filed by the owner of the vehicle and absolve him from any liability as ordered by the High Court. It is now brought to our notice that the entire compensation has already been deposited and the same has been withdrawn by the claimants. No other point has been urged by both sides. We, therefore, allow the appeal and order no costs.