New India Assurance Co., Shimla vs Kamla And Ors on 27 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1419, 2001 (4) SCC 342, 2001 AIR SCW 1340, 2001 (2) LRI 284, 2001 SCC(CRI) 701, 2001 (4) SRJ 473, 2001 (2) UJ (SC) 1121, 2001 (3) SCALE 18, (2011) 1 CPJ 10, (2001) 4 JT 235 (SC), 2001 UJ(SC) 2 1121, 2001 (2) ALL CJ 1132, 2001 (4) JT 235, 2001 ALL CJ 2 1132, (2001) 3 ALLMR 526 (SC), (2001) 1 PUN LR 830, (2001) 1 ACJ 843, (2001) 1 UC 491, (2001) 3 ANDHLD 24, (2001) 2 CURCC 54, (2002) 1 GUJ LR 916, (2001) 3 MAD LW 421, (2001) 2 MAHLR 720, (2001) 3 RAJ LW 382, (2001) 2 SCJ 1, (2001) 2 TAC 243, (2001) 3 SUPREME 84, (2001) 3 RECCIVR 716, (2001) 3 SCALE 18, (2001) WLC(SC)CVL 481, (2002) 1 ACC 346, (2001) 43 ALL LR 378, (2001) 2 ALL WC 1405, (2001) 2 CIVLJ 887, (2001) 3 PAT LJR 74, (2001) 105 COMCAS 398, (2001) 2 CURLJ(CCR) 134

Bench: K.T. Thomas, R.P. Sethi

CASE NO.:
Appeal (civil) 2387 of 2001
Appeal (civil) 2388 of 2001
Appeal (civil) 2389 of 2001

PETITIONER:
NEW INDIA ASSURANCE CO., SHIMLA

Vs.

RESPONDENT:
KAMLA AND ORS.

DATE OF JUDGMENT: 27/03/2001

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

THOMAS, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J If a fake driving licence happened to be renewed by the statutory authorities, would the fakeness of the original document get legally sanctified? If it cannot, would the Insurance Company be liable to pay compensation in respect of a motor accident occurred while the vehicle was driven by a person holding such a sham licence? These are the main questions involved in these appeals.

An accident occurred on 1.3.1993 when a truck, driven by the 8th respondent (Liaqat Ali) capsized. Three inmates of the vehicle died in the accident. Legal heirs of those three deceased persons preferred claims before the Motor Accident Claims Tribunal concerned (for short the Claims Tribunal) as per the provisions of the Motor Vehicles Act, 1988 (for short the Act). The owner of the vehicle as well as the driver were made parties, besides impleading the insurer (appellant Insurance Company) in the claims proceedings. It is admitted that the truck was then covered by a valid insurance policy issued by the appellant company. As we are now concerned only with the contentions of the appellant Insurance Company, that too restricted to the question relating to the driving licence held by the 8th respondent, we do not think it worth referring to the details of other pleadings set out by the claimants and the contending resistors.

The appellant Insurance Company, in the written statement filed before the Claims Tribunal, pleaded inter alia that the driver of the vehicle did not have a valid driving licence and hence there was breach of the policy condition and the corollary is that the Insurance Company cannot be fastened with the liability to pay compensation to any one in respect of the accident referred to in the claim petitions.

The insured owner of the vehicle as well as the driver 8th respondent relied on a document purporting to be a driving licence issued by the licensing authority (SDM, Paonta, Sirmaur District in Himachal Pradesh) bearing No.1874-P/90. The document further shows that it was issued in favour of Liaqat Ali whose photo affixed thereon is admitted to be that of 8th respondent. That licence is claimed to have been renewed by the Licensing Authority, Rohru (H.P.) on 17.4.1993, for a period of three years. According to the insurance company, the said document is a fabricated one as no such licence was granted by the Licensing Authority (SDM), Paonta.

To substantiate the contention appellant insurance company examined three witnesses. RW-2 was Superintendent in the office of the SDM, Paonta. He said that no such licence was issued from that office to a person called Liaqat Ali. He further said that no intimation whatsoever was received by the SDM, Paonta, that the licensing authority of Rohru (SDM) had renewed the licence No.1874-P/90. But RW-3 a clerk in the office of the SDM, Rohru has stated that the licence bearing No.1874-P/90 which stood in the name of Liaqat Ali was renewed by the SDM, Rohru on 17.4.1993, for a period of three years with effect from the date of its expiry. One Anil Chawla, legal officer of the appellant insurance company at Shimla, was examined as RW-4 and he said that on enquiry it was found that SDM, Paonta had not issued any driving licence to Liaqat Ali and hence the document produced by the 8th respondent as his driving licence is a forged document.

The driver Liaqat Ali was not examined before the Claims Tribunal. But the owner of the truck gave evidence to the effect that he engaged the 8th respondent for driving the truck only after satisfying

himself that R-8 had a valid licence. He admitted that the said satisfaction is based entirely on looking at the questioned document.

The Claims Tribunal repelled the contention of the insurance company for which the following observations have been made:

> Evidently, it was for the New India Assurance Company to prove that the truck driver did not have valid driving licence on the date of accident. Apparently, the truck driver had a valid driving licence on the date of accident because the same had been issued in his favour by the SDM, Rohru. Admittedly, whenever a licence is renewed, the Licensing Authority is required to satisfy itself about the genuineness of the earlier licence. Thus, there is a presumption to the effect that while renewing the licence of Shri Liaqat Ali, the Licensing Authority, i.e. SDM, Rohru had satisfied himself about the genuineness of the earlier licence. Therefore, I am of the view that the statement of Shri Anil Chawla (RW-4) is not sufficient to prove that the earlier licence of the truck driver which was renewed by SDM, Rohru was a fake licence. As such, I hold that the New India Assurance Company has failed to prove that truck driver did not have valid driving licence on the date of accident.
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> When the matter was taken up before the High Court the counsel for the insurance company contended that if the original licence was shown to be a forged document no authority has the power to validate it and even if any validation was made on account of a mistaken impression about the genuineness of the document it would not gain any legitimacy. The counsel in the High Court relied on the decision of a Full Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. vs. Santro Devi and ors. {1997(1) ACJ 111} which held that a forged driving licence though may be validly renewed, would not become a valid driving licence or a duly issued driving licence in accordance with the Motor Vehicles Act. In spite of the said decision the Division Bench of the High Court did not accept the contention of the insurance company for which learned judges adopted the following reasoning:
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> From the perusal of the record we have noticed that licence No.1874-P/90 was issued by Registering and Licensing Authority, Paonta Sahib, District Sirmaur, which was valid from 20.3.1990 to 19.3.1993 and the said licence has been marked as X by the Tribunal below. Thereafter, the Licensing Authority, Rohru, District Shimla, renewed the licence of the respondent-driver from 17.4.1993 to 16.4.1996. From the entire evidence on record we find that at the time of the accident i.e. on 1.3.1993 respondent-

driver of the vehicle was in possession of the valid driving licence and the appellant- Assurance Company has not adduced sufficient evidence to discharge the burden which was cast on it under the Act.

In this context learned counsel for the Insurance Company invited our attention to a fact which occurred before the Claims Tribunal. The insurer filed an application for permission to lead evidence for proving that the licence produced by the 8th respondent was a fake one. But that application was rejected by the Claims Tribunal basing on the decision of a Division Bench of the High Court of Punjab and Haryana (which is reported in National Insurance Co. Ltd. vs. Sucha Singh and ors. {1994 (1) ACJ 374}. As per the said decision if a licence is renewed it gets validated in view of the provisions of Section 15 of the Motor Vehicles Act and the Insurance Company would be liable to reimburse the insured the compensation amount paid to the victims. The Claims Tribunal thereupon held that if the licence was validly renewed by a licensing authority then it cannot be presumed that the licence was a fake one. On the said reasoning the Claims Tribunal dismissed the application of the Insurance Company for leading evidence to show that the document produced by the 8th respondent was forged.

Learned counsel submitted that the aforesaid decision of the Division Bench (National Insurance Co. Ltd. vs. Sucha Singh) was overruled by the Full Bench of the same High Court in National Insurance Co. Ltd. vs. Santro Devi (supra). Incidentally, we may refer to a decision rendered by a two-Judge Bench of this Court in National Insurance Co. Ltd. vs. Santro Devi and ors. {1998(1) SCC 219} which pointed out that the observations made by the Full Bench in National Insurance Co. Ltd. vs. Santro Devi were obiter dicta because the facts in that case did not warrant any such observation.

As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to renew a driving licence issued under the provisions of this Act with effect from the date of its expiry. No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. vs. Sucha Singh (supra) that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void for ever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

We are not considering the question whether the insured exhausted the enquiry expected of him for satisfying himself about the genuineness of the document produced by the 8th respondent as his driving licence. The Insurance Company must have, under law, the opportunity to substantiate its contention that the document is a fabricated one. The Claims Tribunal went wrong in denying such an opportunity to the appellant Insurance Company.

Learned counsel for the respondents next contended that even if the driving licence of 8th respondent is proved to be not genuine it would not be enough for absolving the Insurance Company from liability. On the other hand, learned counsel for the appellant Insurance Company, banking on the provisions contained in Section 149 of the Act, submitted that the insurer will get complete exoneration from liability on proof of breach of any one of the conditions of the policy of insurance. We have to examine this contention as a decision on the same is necessary before deciding whether the appellant Insurance Company must be given a further opportunity to substantiate that the document is a forged one.

Chapter XI of the Act contains provisions for insurance of motor vehicles against third party risk. Sections 145 to 164 are subsumed in the said chapter. Section 146 of the Act imposes a prohibition against use of a motor vehicle in public place unless the vehicle is covered by a policy of insurance complying with the requirements enumerated in the Chapter. Some categories of vehicles are exempted from the aforesaid compulsion, but we are not concerned with any such category now.

The details regarding the requirements of the policy including the limits of liability to be insured are enumerated in Section 147. Sub-section (3) of it states that a policy shall be of no effect for the purposes of that Chapter unless and until a certificate of insurance is issued by the insurer in the prescribed form in favour of the insured. It is in Section 149 that provisions, relating to the duty of the insurer for satisfying the judgments and awards in respect of third party claims, are incorporated. Sub-section (1) says that the insurer shall pay to the person entitled to the benefit of a judgment or award as if the insurer were the judgment debtor in respect of the liability, when any such judgment or award is obtained against the insured in whose favour a certificate of insurance has been issued. Of course, the said liability of the insurer is subject to the maximum sum assured payable under the policy.

Section 149(2) of the Act says that notice regarding the suit or other legal proceedings shall be given to the insurer if such insurer is to be fastened with such liability. The purpose of giving such notice is to afford the insurer to be made a party in the proceedings for defending the action on any one of the grounds mentioned in the sub-section. Among the multiplicity of such grounds the one which is relevant in this case is extracted below:

> (a) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-
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> (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.

Sub-section (4) of Section 149 of the Act says that so much of the policy as purports to restrict the insurance of the person insured by reference to any condition shall as respects such liabilities as are required to be covered by a policy, be of no effect. The proviso to the said sub- section is important for the purpose of considering the question involved in this case and hence that proviso is extracted below:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer form that person.

Similarly, in this context sub-section (5) is equally important and hence that is also extracted below: If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy, exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

To repeat, the effect of the above provisions is this:

When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

It is advantageous to refer to a two-Judge Bench of this Court in Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and ors. {1987 (2) SCC 654}. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judges pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the Insurance Company but to protect the members of the community who become sufferers on account of accidents arising from use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependents of the victims) of the accident. This is the raison detre for the legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of insurance.

The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi vs. P. Sesh Reddy and ors. {1996 (5) SCC 21}.

The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants - third parties) from the insured person.

We may point out that as per the order passed by this Court on 6.3.2000, the appellant Insurance Company was directed to pay the award amount to the claimants. We are told that the amount was paid by the appellant to the claimants. Now the Claims Tribunal has to decide the next question whether the insurance company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle. For that purpose we remit the case to the Claims Tribunal. An opportunity shall be afforded to the parties concerned for adducing evidence in that regard. We make it clear that the claimants shall not be bothered during the remaining part of the proceedings.

The appeals are disposed of in the above terms.