

Sardari & Ors vs Sushil Kumar & Ors on 4 March, 2008

Author: S.B. Sinha

Bench: S.B. Sinha, V.S. Sirpurkar

CASE NO.:

Appeal (civil) 1733 of 2008

PETITIONER:

Sardari & Ors

RESPONDENT:

Sushil Kumar & Ors

DATE OF JUDGMENT: 04/03/2008

BENCH:

S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 1733 OF 2008 [Arising out of SLP (C) No. 19965 of 2004] S.B. Sinha, J.

Leave granted.

1. Jagiru was a tonga driver. While, he was driving his tonga on 10.2.1985, he met with an accident, as it collided with a tractor bearing Registration No. HYC 173. In the said accident, he received injuries and ultimately expired on 15.2.1985. At the time of his death, he was aged 40 years.

An application for payment of compensation by the appellants was filed in terms of Section 110-A of Motor Vehicles Act, 1939 (for short "the Act"). Respondent Insurance Company inter alia raised a contention therein that the driver of the said tractor did not hold a valid and effective license.

2. Before the Motor Vehicle Accident Claims Tribunal (The Tribunal), the driver of the said Tractor, Sushil Kumar was examined. He categorically stated that he did not know how to drive a tractor and he never even tried to learn driving of the tractor. He admitted that he had not been possessing any valid driving license to drive a tractor. It was accepted by him that he had even never applied therefor. He also, in answer to a question put to him in cross-examination, admitted that he did not hold a driving license.

The learned Tribunal answered the relevant issue in the following terms;

"15. It is admitted by respondent No. 1 that he was not holding any driving licence to drive the tractor at the time of alleged accident and in fact he never possessed any

driving licence. Since the respondent No. 1 was not holding any driving licence to drive the tractor, so, in view of the conditions contained in the copy of policy Ex. R1, the respondent No. 3 is not liable to pay any compensation. Accordingly, this issue is decided in favour of the respondent No. 3 against the petitioners."

3. In that view of the matter, the application for grant of compensation was dismissed. An appeal preferred thereagainst by the appellants has also been dismissed by the High Court. The High Court, however, was of the opinion that the finding of the Tribunal that no accident took place due to rash and negligent driving of Sushil Kumar, was not correct holding that the appellants were entitled to compensation of Rs. 63,000/- from the respondent Nos. 1 and 2.

4. Appellants are, thus, before us.

Nobody has appeared on behalf of the appellants.

5. The question, as regards the purport and object for which the Act had been enacted and as also the statutory obligations on the part of the owner of the vehicle to get the same compulsorily insured came up for consideration in a large number of cases.

This Court, time and again made a distinction between a case where third party is involved vis-à-vis where the owner of the vehicle was involved in the accident. The matter relating to grant of license is dealt with in the Act. There are provisions in terms whereof despite expiry of the period of license, the same can be renewed. There are also provisions providing for grant of a fresh license. In certain situation, the authorities are also entitled to refuse to renew the license.

6. Although, in terms of a contract of insurance, which is in the realm of private law domain having regard to the object for which Section 147 and 149 of the Act had been enacted, the social justice doctrine as envisaged in the preamble of the Constitution of India has been given due importance. The Act, however, itself provides for the cases where the insurance Company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions of contract of insurance. Where the breach of conditions of contract is ex-facie apparent from the records, the Court will not fasten the liability on the Insurance Company. In certain situations, however, the Court while fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants the awarded amount with liberty to it to recover the same from the owner.

7. The concurrent finding of fact herein is that Sushil Kumar never held a license. The owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he authorized to drive the same holds a valid license. Here again, a visible distinction may be noticed, viz. where the license is fake and a case where the license has expired, although initially when the driver was appointed, he had a valid license.

The question came up for consideration before this Court in United India Insurance Co. Ltd. Vs. Gian Chand and Others [(1997) 7 SCC 558], wherein it was held;

"12. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver...."

A three Judges' Bench of this Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others [(2004) 3 SCC 297], upon going through the provisions of the Act as also the precedents operating in the field, laid down the following dicta;

"84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar 22 .)"

In National Insurance Co. Ltd. Vs. Kusum Rai and Others [(2006) 4 SCC 250], a Bench of this Court (wherein one of us was a member) held;

11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.

14. This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

The question as regards the liability of the owner vis-à-vis the driver being not in possession of valid license has also been considered in para 89 in Swaran Singh (supra).

8. Yet again in *New India Assurance Co. Ltd. Vs. Prabhu Lal* [JT 2007 (13) SC 246], the Court stated the law in the following terms:-

"33. In the present case, all the facts were before the District Forum. It considered the assertion of the complainant and defence of the Insurance Company in the light of the relevant documentary evidence and held that it was established that the vehicle which met with an accident was a 'transport vehicle'. Ram Narain was having a licence to drive Light Motor Vehicle only and there was no endorsement as required by Section 3 of the Act read with Rule 16 of the Rules and Form No. 6. In view of necessary documents on record, the Insurance Company was right in submitting that Ashok Gangadhar does not apply to the case on hand and the Insurance Company was not liable."

However, *Swaran Singh* (supra) has been distinguished by this Court in some cases holding that where the owner of the vehicle himself is involved, insurance company will not be liable.

In *Premkumari & Ors. Vs. Prahlad Dev & Ors.* [(2008) 1 SCALE 531], a Bench of this Court following *Kusum Rai* (supra), opined;

"10. In the case of *National Insurance Co. Ltd. v. Kusum Rai and Ors.* (2006) 4 SCC 250, the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence therefor. Ram Lal, who allegedly was driving the said vehicle at the relevant time, was holder of a licence to drive light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. In such circumstances, the Court observed that the appellant-National Insurance Co. Ltd., therefore, could raise the said defence while considering the stand of the Insurance Company. This Court, pointing out the law laid down in *Swaran Singh* (supra) concluded that the owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. However, taking note of the fact that the owner has not appeared, the victim was aged only 12 years, the claimants are from a poor background and to avoid another round of litigation applying the decision in *Oriental Insurance Co. Ltd. v. Nanjappan* (2004) 13 SCC 224 and finding that though the appellant-Insurance Company was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court committed an error in holding otherwise, in the peculiar facts and circumstances of the case and in exercise of jurisdiction under Article 136 of the Constitution declined to interfere with the impugned judgment therein and permitted the appellant- Insurance Company to recover the amount from the owner of the vehicle."

In *Oriental Insurance Co. Limited Vs. Prithvi Raj* [2008 (1) SCALE 727], however, noticing *Swaran Singh* (supra), it was opined;

"10. 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. 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."

In Ishwar Chandra & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors. [2007 (4) SCALE 292], this Court held;

"9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place 28.04.1995. As on the said date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident."

9. For the reasons aforementioned, there is no merit in this appeal which is accordingly dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.