

IN THE HIGH COURT OF DELHI AT NEW DELHI
RFA No. 486/2006

Judgment delivered on: 11.08.2010

National Insurance Company Ltd. Appellant
Through: Mr. Manoj R. Sinha, Advocate
Versus
R.P. Sharma Respondent
Through: Mr. Ramesh Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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1 . By this appeal filed under Section 96 of the Code of Civil Procedure, 1908, the appellant seeks to challenge the judgment and decree dated 2.5.2006 passed by the learned Additional District & Sessions Judge, Delhi in suit No. 308/2004 thereby decreeing the suit in favour of the respondent for a sum of Rs.3, 50,000/- with interest @ 9% per annum from the

date of repudiation of the claim till realization of the decretal amount.

2 . Brief facts of the case relevant for deciding the present appeal are that the respondent is the registered owner of the truck bearing no. HR 38 7885 attached to M/s Chetak International Cargo Ltd. for the purpose of carriage of goods of customers to various destinations throughout the country and that the aforesaid vehicle was insured with the appellant insurance company for a sum of Rs. 3, 50,000. The aforesaid vehicle while enroute from Faridabad to Madras carrying auto parts self ignited near Nawasphate, Madhya Pradesh resulting in total loss of the truck. Thereafter the respondent submitted his claim with the appellant which was rejected on the ground that the claim was not admissible under the terms and conditions of the policy as the driver of the vehicle at the time of the accident did not hold a valid licence and hence repudiated the claim of the respondent. Thereafter the respondent filed a suit for recovery bearing suit no. 308/04 and vide judgment and decree dated 2.5.2006 the suit has been

decreed in favour of the respondent for an amount of Rs. 3,50,000 with an interest @ 9% p.a from the date of repudiation of the claim till the realization of the decretal amount alongwith the costs of the suit. Aggrieved with the said judgment and decree the appellant has preferred the present appeal.

3. Counsel for the appellant submits that the Id. Trial Court has failed to appreciate the fact that the license of the driver who was driving the vehicle in question was fake. Counsel for the appellant therefore submits that the claim filed by the respondent was rightly repudiated by the appellant company due to the breach of the policy terms. Counsel for the appellant further contends that the Id. Trial court overlooked the fact that the respondent himself has given consent to settle the claim for an amount of Rs.1,35,000/- excluding the value of salvage and therefore the respondent is estopped under law to have claimed a higher amount than the agreed amount. Counsel for the appellant also contends that

Id. Trial Court also committed another illegality by not deducting the value of the salvage and decreed the suit for the total insured sum. Drawing attention of this court to the written arguments filed by the respondent, the counsel contends that the respondent in his written arguments has claimed the total loss at Rs.2,42,500/- himself but ignoring the stand of the respondent the Id. Trial Court has granted a decree for an amount more than what has been claimed by the respondent. Based on these submissions the counsel states that the said decree passed by the Id. Trial Court is liable to be set aside.

4. Opposing the said submissions of the counsel for the appellant, counsel appearing for the respondent submits that the appellant failed to lead any evidence before the Id. Trial Court in support of its allegation that the license of the driver at the time of the accident was fake. Counsel for the respondent further submits that the appellant also did not adduce any evidence to prove that the vehicle caught fire because of some negligence on the part of the driver or it was

on account of lack of driving skills of the driver which contributed to the incident. Counsel for the respondent also referred to the judgment of the Supreme Court in the case of ***Jitender Kumar Vs. Oriental Insurance Co. Ltd. & Ors., 2003 ACJ 1441***, where in identical facts, the Court held that holding of an invalid license has no nexus to self ignition and therefore claim on such ground cannot be repudiated by the Insurance Company. Counsel for the respondent further submits that reliance on this very judgment was placed by the appellant itself and therefore the appellant cannot take any contrary stand to the settled legal position.

5. Counsel for the respondent further submits that so far the quantum of compensation is concerned, the earlier consent given by the respondent became inconsequential as the appellant itself did not care to pay the amount as per the settlement and rather had repudiated the claim of the respondent. Counsel thus states that the appellant now cannot fall back on the said consent given by the respondent. So far the stand taken by the respondent in his written arguments is

concerned, counsel submits that a more realistic assessment of the loss was made by the respondent after deducting the salvage value of the vehicle and 5% depreciation price. Counsel, however, states that the respondent had claimed an interest @ 12% per annum but the same was varied by the Id. Trial Court and granted @ 9% per annum. Based on these arguments counsel submits that the Id. Trial Court has passed the judgment and decree on correct appreciation of the facts and law involved.

6. I have heard counsel for the parties at considerable length and have given my thoughtful consideration to the facts of the case.

7. No evidence was led by the appellant to prove that the driver was holding a fake license. The appellant has also not produced any evidence to prove that the vehicle caught fire due to any negligence or lapse on the part of the driver. It is an admitted fact that the vehicle in question was not involved in any road accident and the same caught fire after the driver had smelt burning of some cloth like object and on

being informed by a passerby motorcyclist that the smell was emanating from the truck. The Ld. Trial Court has referred to the judgment of the Apex Court in the case of ***Jitender Kumar (Supra)*** where the Apex Court took a view that where the incident had occurred due to no fault of the driver, the Insurance Company could not have repudiated the claim for damages on the ground that the driver had no valid driving license to drive the vehicle. The Ld. Trial Court has also referred to Section 149 (2) (a) (ii) of the Motor Vehicles' Act which also does not permit the insurance company to repudiate the claim for damages not referable to any of the acts committed by the driver. There is thus no force in the contention raised by the counsel for the appellant that the appellant has rightly repudiated the claim of the respondent on account of the alleged breach of policy terms and conditions.

8. I also do not find any force in the argument of the counsel for the appellant contending that the respondent earlier had settled the matter for a sum of Rs.1,35,000/- as admittedly after the said settlement instead of paying the said

amount the appellant had repudiated the claim of the respondent. Once the appellant itself did not come forward to honour the said settlement, therefore the appellant now cannot be allowed to derive any benefit from the said offer given by the respondent. Hence, this plea of the counsel for the appellant is also rejected.

9. So far the argument of the counsel for the appellant with regard to the grant of decree for the total sum insured is concerned, I find some merit in his submission. The respondent has not disputed the fact that in the written arguments filed by him, the stand taken by him was that a sum of Rs.2,42,500/- was payable by the appellant insurance company after giving allowance of Rs.90,000/- towards salvage of the vehicle and Rs.17,500/- towards 5% depreciation. With the reduction of these two amounts from the sum insured i.e. Rs.3,50,000/-, a total amount of Rs.2,42,500/- becomes payable. It is quite evident that the Id. Trial Court has ignored the said admission on the part of the respondent and therefore the impugned judgment and decree is modified to that limited

extent of replacing the decretal amount from Rs.3,50,000/- to Rs.2,42,500/-.

10. So far the argument of the counsel for the respondent that the respondent had claimed an interest @ 12% per annum, this court is not inclined to interfere with the interest rate which has been rightly granted by the Ld. Trial Court in exercise of its discretion @ 9% per annum.

11. In the light of the above discussion, the present appeal is allowed to the limited extent of modifying the said judgment and decree. The respondent shall now be entitled to the grant of judgment and decree for a sum of Rs.2, 42,500/- with interest @ 9% per annum from the date of repudiation of his claim i.e. dated 20.06.2001 till realization of the decretal amount. The respondent is also granted costs of the suit.

KAILASH GAMBHIR, J

August 11, 2010
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