

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.A.175/2007

% Judgment reserved on: 6th March, 2013
Judgment delivered on: 4th April, 2013

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Rajesh Dwivedi, Adv. for
Mr. A.K. De, Adv.

versus

AMARATTA & ORS. Respondents
Through: Mr. Jai Prakash, Adv. for R1 to R5.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the impugned judgment dated 22.11.2006 whereby Id. Tribunal has awarded compensation against the respondent no. 6 driver, respondent no. 8 (current owner of the offending vehicle) and the present appellant.

2. The present appellant was directed to pay the compensation amount by the Id. Tribunal and if any civil suit accrued in favour of the appellant being owner of the vehicle and against respondent nos. 6 & 8, in that eventuality, the appellant is at liberty to take action against the above mentioned respondents.

3. The facts of the case in hand are very peculiar in nature. On

16.10.2003, at about 5.30 AM deceased Jia Lal was going on footpath, coming for performing the call of nature from the side of Des Bandhu Gupta Road. Meanwhile, one Car bearing no. HR-16-B-2066 driven by respondent no. 6 in rash and negligent manner broke the rallying of footpath and turned towards the side of Jhandewalan and hit deceased Jia Lal from back side, due to which he received fatal injuries.

4. Respondent no. 6 (respondent no. 1 before Tribunal) had filed written statement wherein he stated that the suit was not maintainable as he was not the driver of the vehicle in question. No accident was caused by him and his name was mentioned as driver with *mala fide* intention.

5. Respondent no. 9, National Insurance Co. Ltd. (respondent no. 4 before Tribunal) also filed written statement wherein it is stated that on checking of its record, it was not found that the cover note no. 295257 was issued on 21.02.2000 insuring a Zen Car No. DL-4CH-4920 for the period 21.02.2000 to 28.02.2001 in favour of Modex International Securities Limited, thus, it is clear that Santro Car No. HR-16-B-2066 was not insured with respondent no. 9. Therefore, the cover note was manipulated. In this manner, respondent no. 9 was not the necessary party to the suit.

6. The appellant (respondent no. 5 before Tribunal) also filed the written statement in which it is stated that they were not the insurer of the offending vehicle nor the alleged offending vehicle was being used or plied at its instructions. The amount claimed by the claimants was

highly exaggerated and exorbitant.

7. Respondent nos. 7 & 8 were not present before the Id. Tribunal and they were proceeded ex-parte by the tribunal vide order dated 04.01.2005.

8. Ld. Tribunal has framed issues as under: -

“1. Whether the deceased Jia Lal died in a motor vehicular accident dated 16.10.2003 due to rash and negligent driving of Santro Car (having two registration nos. HR-16-B-2066 / DL-4CJ-1462 driven rashly and negligently by respondent no.1 Rafiq?

2. Whether the petitioners are the only LRs of the deceased?

3. Whether the respondents are not liable to make payment of compensation in view of the objection raised in the written statement?

4. To what amount of compensation, the petitioners are entitled to receive and from whom?

5. Relief.”

9. During trial, respondent no. 1 / claimant had appeared herself as PW1 and proved the allegations in the petition and also proved the negligence by filing the certified copy of the record as Ex.P1 to Ex.P25.

10. PW2 Paras Nath, nephew of the deceased examined as eye witness of the accident.

11. Respondent no. 9 National Insurance Company Limited has also

examined four witnesses to rebut the claim of the petitioners. R4W1 A.N. Chauhan, Assistant Divisional Manager proved the copy of cash collection receipt dated 21.02.2000 Ex.R4W1/1. The carbon copy of the policy is Ex.R4W1/12. The attested copy of the Collection Register is ExR4W1/3. R4W2 Sh. M.M. Narang, Development Officer of respondent no. 9 has proved the cover note as Ex.R4W2/1. R4W3 Naresh Chand, LDC from Janak Puri Transport Authority has stated that the vehicle was transferred in the name of the appellant i.e. United India Insurance Co. Ltd. w.e.f 16.10.2001. Copy of RC is Ex.R4W3/1. R4W4 Sh. Mukund Kumar, Sr. Assistant with respondent no. 9 has proved the certified copy of challan as Ex.R4W4/1.

12. Appellant (respondent no. 5 before Tribunal) has examined Ms. Veni Lata, its Assistant Manager, who proved the insurance policy of the vehicle for the period from 26.07.2000 to 25.07.2002.

13. Instant appeal has been filed mainly on the ground that the offending vehicle was a stolen vehicle and it was with respondent nos. 6 & 8 (respondent nos. 1 & 3 before Tribunal). Therefore, the appellant company cannot be the owner of the said vehicle and therefore, the ld. Tribunal has wrongly fasten the liability on the appellant.

14. Ld. Counsel for the appellant argued that in such circumstances, ld. Tribunal should have at least given the recovery rights against the owner of the offending vehicle, who is also responsible to create false documents.

15. Counsel for the appellant has relied upon a case of *New India Assurance Co. Ltd. v. Selvarajamani & Ors. 1998 ASCJ 547* decided by Double Bench of the High Court of Madras whereby it is held that if the offending vehicle was not in custody and control of the owner, then the said owner cannot be held liable to pay the compensation.

16. On the other hand, Id. Counsel appearing on behalf of the respondents / claimants has submitted that since the offending vehicle was registered in the name of the appellant at the time of accident, therefore, being the owner of the offending vehicle, Id. Tribunal has rightly fasten the liability on the appellant.

17. Issue no. 1 & 2, as noted above, need not be discussed as there is no dispute qua both the issues.

18. So far as issue no. 3 is concerned, respondent no.6 was the driver of the offending vehicle, i.e., HR-16-B-2066, which was allegedly owned by respondent no. 8.

19. It is not in dispute that the offending vehicle which caused the accident was stolen one in the hands of respondent no. 6 having insurance policy from respondent no. 9, i.e., National Insurance Co. Ltd. vide Cover note no. 27749. The said Company in its written statement as well as in evidence examined Sh. A.N.Chauhan as R4W1, Sh. M.M. Narang as R4W2, Sh. Naresh Chand as R4W3 and Sh. Mukund Kumar as R4W4, who have proved on record that Cover Note

was issued by their agent in favour of vehicle No. DL-4C-H-4920, which was Maruti Zen Car and not for offending vehicle, i.e., HR-16-B-2066 or Vehicle No. DL-4CJ-1462, which was Hyundai Santro Car.

20. From the certified copies of the criminal case on record and from the testimony of R5W1 Ms. Vani Lata, it is established that vehicle bearing no. HR-16B-2066 was having fake number as the vehicle was not registered in the Transport Authority, Bhiwani, Haryana. From the enquiry of the Investigating Officer of the present case, it is established that, in fact, number of the aforesaid Santro Car was DL-4CJ-1462, which was a stolen vehicle against which FIR under Section 379 IPC was registered in PS-Patel Nagar, Delhi.

21. Testimony of R4W3 Naresh Chand, LDC has proved that the vehicle no. DL-4CJ-1462 was transferred in the name of the appellant and the registration certificate of the offending vehicle is still in the name of appellant.

22. On considering the evidence on record, ld. Tribunal has opined that there is no liability of respondent no. 7 Sh. Subhash Chand, who was the owner of the vehicle bearing no. DL-4CJ-1462 as his vehicle was stolen in 2001, much before the accident and the said vehicle had already been transferred under subrogation right in favour of the appellant. Therefore, issue no. 3 has been decided in favour of respondent no. 7, i.e., Subhash Chand, who was not liable to make the payment of the compensation to the claimants.

23. Ld. Tribunal has also opined that respondent no. 9 National

Insurance Company is also not liable for making the payment of compensation in respect of the accident in question because it has been proved by respondent no. 9 that cover note dated 22.02.2000 was found in offending vehicle which was belonging to vehicle no. DL-4C-H-4920, i.e., Zen Car and not for Santro Car HR-16-B-2066 or for vehicle bearing no. DL-4CJ-1462.

24. On considering the evidence on record, Id. Tribunal has also opined that respondent no. 6 in consultation and connivance with respondent no. 8 has created false and fabricated documents in respect of the offending vehicle and therefore respondent no. 9, i.e., National Insurance Co. Ltd. being the insurer of the vehicle in question was also not held liable to make the payment of compensation in favour of the claimants. Accordingly, respondent no. 6 being the driver of the offending vehicle, respondent no. 8 being the alleged owner of the offending vehicle and appellant being the registered owner of the offending owner of the offending vehicle are held liable to make the payment of the compensation in favour of the claimants.

25. Since the false documents in respect of the offending vehicle and false insurance certificate were created by the aforesaid driver and owner, therefore, both of them held jointly and severally liable to make the payment of compensation to the claimants.

26. Simultaneously, since the appellant has become the owner of the vehicle, after making the payment of the compensation amount to respondent no. 7 in case of theft of vehicle, the appellant being the

owner of the offending vehicle is also held liable to make compensation to the claimants.

27. While doing so, Id. Tribunal has relied upon a case of *S. Kaushnuma Begum & Ors. v. New India Assurance Co. Ltd. AIR 2001 SC 485* wherein it is held that even if driver not negligent in causing the accident, claim for compensation before the Tribunal is sustainable and owner is vicariously liable for the damages on the basis of strict liability.

28. In view of the above discussion and legal position, I do not find any discrepancy in the judgment dated 22.11.2006 passed by the Id. Tribunal, therefore, I am not inclined to interfere therewith.

29. Consequently, finding no merit in the instant appeal, same is dismissed with no order as to costs.

30. It is informed by the Id. Counsels for the parties that statutory amount and awarded amount is lying with the Id. Tribunal. Therefore, Id. Tribunal is directed to release statutory amount in favour of the appellant and compensation amount in favour of the claimants in terms of the order dated 22.11.2006 passed by it.

SURESH KAIT, J

APRIL 04, 2013

Jg