

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1920 of 2002

Appellant :- New India Assurance Company Limited

Respondent :- Smt. Prakash Devi And Others

Counsel for Appellant :- Rajeev Chaddha

Counsel for Respondent :- Madhav Jain

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present appeal has been filed by the appellant-insurance company challenging the award dated 30.05.2002 passed by Motor Accident Claims Tribunal, Agra in M.A.C.P. Case No.777 of 2000.

3. Challenging the award, learned counsel for the appellant has contended that the finding of the tribunal that the driver of the offending vehicle i.e. truck No.MP07/B7325 was having a valid driving license at the time of accident and the owner of the offending vehicle has not committed any breach of policy is erroneous and not sustainable in law inasmuch as the burden was upon the owner to prove that the driver of offending vehicle was having a valid driving license. It is submitted that once the owner discharges its burden by proving that the driver of the offending vehicle had valid driving license, the burden would shift upon the insurance company to prove that the driver of offending vehicle was having a valid driving license. The said submission is made on the strength of the judgement of the Apex Court in the case of **Pappu and Ors. v. Vinod Kumar Lamba and Anr. 2018 (3) SCC 208**. It is lastly urged that the interest of 9% on the awarded amount is excessive.

4. Per contra, learned counsel for the respondents has contended that the burden is upon the insurance company to prove that the offending vehicle was being driven by a person not holding a valid driving license at the time of accident. It is further submitted that the insurance company also has to prove that the breach committed by the owner is deliberate and in the instant case, the insurance company has not set up such a plea before the tribunal. The finding of the tribunal on the issue of breach of policy is based upon settled principles of law and is not liable to be interfered with by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellant has relied upon a judgement of the Apex Court in the case of **Pappu (supra)**. The relevant extract of paragraph 11 of the said judgement is reproduced herein below:-

"11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in

the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

7. In the case of **Pappu (supra)**, the Apex Court has also considered the judgement of **National Insurance Co. Ltd. v. Swaran Singh and Ors. (2004) 3 SCC 297**. In paragraph 14 of the judgement in the case of **Pappu (supra)**, paragraph 107 of the judgement in the case of **Swaran Singh (supra)** has been reproduced.

8. The Apex Court in the case of **Pappu (supra)** has not doubted the law laid down in the case of **Swaran Singh (supra)**, rather placed reliance upon judgement of **Swaran Singh (supra)**. At this stage, paragraph 107 of the judgement in the case of **Swaran Singh (supra)** is reproduced herein below:-

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it has not been able to do so, the insurance company may

initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

9. It is also relevant to reproduce paragraph 110 (iii) & (iv) of the judgement in the case of **Swaran Singh (supra)** are reproduced herein below:-

"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

10. Now, perusal of the paragraph 110 (iii) & (iv) of the judgement in the case of **Swaran Singh (supra)** reveal that the insurance company in order to avoid its liability must not only establish the available defence raised in the said proceedings but also must establish 'breach' on the part of the owner of the vehicle was deliberate and the burden of proof was upon the insurance company.

11. Now, in the case of **Pappu (supra)**, the Apex Court has considered a case where the tribunal after recording a finding that the owner has committed breach of insurance policy absolved the insurance company and directed the owner to pay the compensation. The appellant-Pappu who was claimant preferred an

appeal before the High Court seeking modification of the award in view of the law in the case of **Swaran Singh (supra)**. Accordingly, he prayed that the award may be modified and the insurance company may be directed to pay the award and thereafter, recover from the owner which prayer was allowed by the Apex Court. In the said case, there was no direct issue on whom the burden to prove that the offending vehicle was being driven by a person not holding a valid driving license would lie was involved.

12. In the case of **Swaran Singh (supra)**, several awards were assailed by the insurance company denying its liability on the ground of breach of policy that the burden is upon the owner to prove that the offending vehicle was being driven by a person holding a valid driving license, and thereafter, burden would shift upon the appellant insurance company. In such factual backdrop, the Apex Court has summarized the finding in paragraph 110 of the judgement after considering the defence provided to the owner under Section 149(2)(a)(ii).

13. This Court is of the view that the Apex Court in the case of **Pappu (supra)** in altogether different factual backdrop made an observation that the burden is upon the owner to prove that the driver of offending vehicle was having a valid driving license at the time of accident, the law laid down by the Apex Court in the case of **Swaran Singh (supra)** is still a good law and is binding precedent which is also evident from the fact that the Apex Court has also considered the judgement in the case of **Swaran Singh (supra)** and placing reliance upon the same, it modified the award in the case of **Pappu (supra)**.

14. In such view of the fact, the contention of learned counsel for

the appellant is misconceived and not sustainable.

15. It is also pertinent to note that other condition to avoid liability that the breach committed by the owner was deliberate was not set up by the insurance company nor the insurance company led any evidence in this regard before the tribunal. In such view of the fact, the insurance company cannot escape from its liability to pay compensation.

16. Consequently, the appeal lacks merit and is **dismissed**.

Order Date :- 12.10.2023

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