

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.166 of 2008

(Against the judgment and award dated 24.12.2007 passed by District Judge-cum-Motor Vehicle Accident Claim Tribunal, Nalanda in Claim Case No.41 of 2004)

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The Oriental Insurance Company Ltd.

..... Opposite party no.2-Appellant
Versus

Sabita Kumari & Ors.

..... Claimants-Respondents
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Appearance :

For the Appellant : Mr. Durgesh Kumar Singh, Advocate.
For Respondent no.3 : Mr. Shambhu Kumar, Advocate.
For Respondent nos.1 & 2 : Mr. Pramod Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 18-03-2015

The insurance company has filed this miscellaneous appeal under Section 173 of the Motor Vehicle Act against the impugned judgment and award dated 24.12.2007 passed by the District Judge-cum-Motor Vehicle Accident Claim Tribunal, Nalanda in Claim Case No.41 of 2004 whereby the court below awarded compensation to the extent of Rs.3,93,500/- and directed the insurance company to pay and then recover the same from the owner.

2. It appears that the claim case was filed by the claimants-respondents claiming compensation on account of death of Awadhesh Kumar because of accident caused by rash and negligent driving of the driver of Maruti Van bearing No.DL-1CF-7738.

3. In the present case because of nature of the dispute raised by the appellant it is not necessary to go in details of the other facts. It will suffice to say that the insurance company-appellant raised the grounds in the written statement that the owner-cum-driver had no licence to drive the vehicle. The court below after considering the evidences found that the driving licence produced by the owner-cum-driver of the vehicle was fake one but directed the insurance company to pay compensation amount and recover the same from the owner.

4. Learned counsel Mr. Durgesh Kumar Singh appearing on behalf of the insurance company submitted that when the insurance company is not at all liable to pay compensation, the insurance company cannot be directed to deposit the same with liberty to recover from the owner. The learned counsel submitted that the Hon'ble Supreme Court in exercise of jurisdiction under Article 142 of the Constitution of India directed in some cases to pay the compensation and recover from the owner but it is not a precedent. According to the learned counsel, the insurance company cannot be directed to pay compensation if company is not liable to pay and then the insurance company cannot be directed to recover the same from owner because it will take long period and also in the said process of recovery the public money will be spent. Here, in the present case it



is not the case of the owner that the vehicle was driven by a person, who had no valid licence or that he had valid driving licence of other vehicle or that the licence was not renewed rather the owner was himself driving the vehicle and he produced a licence, which was found to be fake which is as good as no licence. Therefore, admittedly the owner himself breached the conditions of insurance. He even played a fraud on the Court by producing a forged and fabricated licence and tried to mislead the Court and, therefore, on this ground alone the judgment and award directing the insurance company to pay compensation is liable to be set aside. The learned counsel submitted that the owner intentionally violated the conditions and therefore, the owner cannot take advantage of his own fault. The learned court below has, therefore, wrongly directed the appellant to pay compensation and recover the same from owner.

5. On the other hand, the learned counsel appearing on behalf of the respondent-owner submitted that he has paid all the claim of the claimants and in fact after receiving the amount the claimants have given in writing that they will not demand anything more.

6. The learned counsel appearing on behalf of the claimants-respondents submitted that it is incorrect to state that everything has been paid by the owner. So far the submission of the



learned counsel for the appellant is concerned, the learned counsel for the claimants submitted that it is consistent practice of the Supreme Court that the insurance company is directed to pay compensation and recover the same from the owner. Following the said practice the Motor Vehicle Accident Claim Tribunal has directed the insurance company to pay compensation and recover the same. According to the learned counsel, if compensation is not paid by the insurance company, the claimants will face difficulty in recovering the same from the owner. Learned counsel relied upon the decision of the Supreme Court in the cases of **M/s. National Insurance Co. Ltd. Vs. Baljit Kaur and others, A.I.R. 2004 Supreme Court 1340** and **Oriental Insurance Co. Ltd. Vs. Nanjappan and others, A.I.R. 2004 Supreme Court 1630** and submitted that the insurance company is liable to pay quantum of compensation fixed by the Tribunal to the claimants at the first instance and recover it from the insured.

7. In view of the above contentions of the learned counsels appearing on behalf of the parties the point arises for consideration in this miscellaneous appeal is as to whether in the facts and circumstances of the present case the insurance company can be directed to pay the amount fixed by the Tribunal and recover the same from the owner?



8. In the present case, the owner has appeared and filed written statement and the driving licence. The insurance company sent the said driving licence in the name of Jitendra i.e. the owner for verification. The District Transport Officer, Patna reported that the driving licence bearing No.5606 of 2001 the licence was issued in the name of Ranjan Kumar son of Sri Ram Ayodhya Singh. It appears that driving licence produced by the owner is in his own name. Against this report the owner, who is also driver, has not filed any objection. In other words, it can very safely be held that owner-cum-driver produced a forged driving licence.

9. The insurance company-appellant has also produced A/1, the report of the investigator, who investigated about the driving licence. The investigator after investigation has also recorded the finding that he found the driving licence produced by the driver-cum-owner is a forged and fake driving licence.

10. From perusal of the judgment and award of the court below also I find that the court below has recorded a clear finding that the driving licence produced by the owner-cum-driver is a fake driving licence. There is no dispute that the owner is the driver of the vehicle in question. In view of the above position the finding of the court below on this question regarding the fakeness of the licence is hereby confirmed. So far direction to the insurance company to pay



compensation and recover the same from the owner is concerned, now let us consider the various decisions relied upon by the parties. The learned counsel for the claimants relied upon the decision of the Supreme Court, **A.I.R. 2004 Supreme Court 1340**. So far this decision is concerned, I find that the said decision relates to the death of gratuitous passenger carried in goods vehicle. There was no dispute in this case regarding fake driving licence. Likewise in the other case i.e. **A.I.R. 2004 Supreme Court 1630** it appears that in that case the Tribunal held that claimants were entitled to compensation from the owner of the vehicle and the insurer had the liability to pay compensation by way of indemnification. It may be mentioned here that in that case the driver was not the owner. The insurance company is required to indemnify the owner. Here, in the present case the driver and owner are same person. No case has been produced before this Court either by the claimants or by the owners wherein direction has been given to the insurance company to indemnify the owner, who is also a driver.

11. From the above facts now it becomes clear that the owner of the vehicle produced a forged and fake driving licence before the Tribunal and thereby played a fraud with a view to obtain order from the Tribunal to the effect that insurance company is liable to indemnify the owner because of the fact that the driver had the



valid licence. Now, therefore, the owner of the vehicle cannot be allowed to say that he is not liable to pay compensation. The Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hand. A person whose case is based on falsehood, has no right to approach the Court. He can summarily be thrown out at any stage of the litigation. It is settled principle of law that fraud avoids all judicial acts, ecclesiastical or temporal.

12. It is settled principles of law that in relation to a third party the grounds upon which the insurer can deny its liability are contained in sub-section (2) of Section 149 of the M.V. Act. The Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Vidhyadhar Mahariwala and others, (2008) 12 Supreme Court Cases 701** has held that the insurance company would have no liability in the case of this nature i.e. in that case on the date of accident dated 11.06.2004 the driving licence of the driver was not valid. The driver's licence was initially valid from 15.12.1997 to 14.12.2000 and then 29.12.2000 to 14.12.2003. The said licence was again renewed on 16.05.2005 to 15.05.2008. The Motor Accident Claim Tribunal held that since the driver's licence was renewed subsequently it cannot be said that on the date of accident driver was incompetent or disqualified. The High Court also

held that the insurer was liable to indemnify the award. The Supreme Court relying on the earlier decision **(2007) 10 Supreme Court Cases 650 (Ishwar Chandra Vs. Oriental Insurance Co. Ltd. and others)** held as above. Accordingly, the appeal filed by the insurance company was allowed and judgment of the High Court was set aside. The claimants were directed to recover the amount from the owner.

13. In the present case at our hand, the driver had no licence at all what to speak of invalid licence or un-renewed licence. On the other hand, he produced fake licence. Now can it be said that although the driver, who is the owner himself, tried to mislead or played fraud on the Court then also the insurance company is liable to indemnify the owner and thereafter he will recover the same from the owner.

14. The Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Swaran Singh and others, (2004) 3 Supreme Court Cases 297** has held that:

“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 the accident, at all e.g. a case where an accident takes place owing to a mechanical fault or vis major.”

15. It is settled principles of law that the Claims Tribunal constituted under Section 165 read with section 168 is empowered to adjudicate all claims in respect of accidents involving death or bodily injury or damage to property of a third party arising in use of a motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between the claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide the disputes inter se between the insurer and the insured. The Hon’ble Supreme Court in the case of **National Insurance Co. Ltd.** (supra) aforesaid decision at paragraph 110 (ii), (iii) and (iv) has held as follows:

- (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.
- (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 wherefore would be on them.

16. In view of the above settled principles of law to avoid its liability the insurance company 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 a duly licensed driver or one who was not disqualified to drive at the relevant time. Here, in the present case at our hand, it is admitted fact that the owner was the driver himself, who had no driving licence at all. Therefore, the insurer has proved the guilt of the owner-cum-driver, who intentionally committed breach of terms and conditions of the policy. Therefore, it becomes now clear that the owner-cum-driver of the vehicle was not duly licensed or qualified

for driving the vehicle as such the vehicle was being driven by a person, who had no licence at all what to speak of valid licence, which caused the accident.

17. The Hon'ble Supreme Court in the case of **Prem Kumari and others Vs. Prahlad Dev and others, (2008) 3 Supreme Court Cases 193** has held that even in the case that licence was fake, the insurance company would continue to remain liable unless it proves that the owner was aware or noticed that the licence was fake and still permitted him to drive. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act. Here, it has been proved beyond doubt that the owner, who was himself a driver, had no licence but still he himself was driving the vehicle. The Supreme Court in the above case directed the insurance company to recover the said amount from the owner of the vehicle in the same manner as directed in the case of **Nanjappan case, (2004) 13 Supreme Court Cases 244**. It appears that the Tribunal in that case held that the insurer was not liable as the driver had a fake licence. The Hon'ble Supreme Court relying upon the case of **National Insurance Co. Ltd. Vs. Swaran Singh** directed the insurance company to recover the same from the owner.

18. In view of the above settled principles of law there is no dispute that if the insurer proved the fact that driver had no



licence or fake licence but still the owner allowed the driver to drive the vehicle the insurance company is not liable to compensate the owner. The insurer can very well avoid its liability as proved under Section 149(2) (a) (ii). Here, in the present case as stated above the insurance company has been able to prove that driver had no licence at all. Therefore, the insurance company is not liable to compensate the owner. The case would have been otherwise if the driver had no valid licence. Here, the owner is driver himself. In such circumstances the insurance company cannot be directed to pay the compensation first to the claimants on behalf of the owner and then recover the same from the owner. In other words, the owner cannot be allowed to be compensated for the wrong done by him intentionally, particularly when the insurance company is not liable to pay.

19. In view of my above discussion, I find that the insurance company cannot be directed to pay the amount fixed by the Tribunal and recover the same from the owner. In fact the insurance company is not liable to pay at all and, therefore, when the company is not liable to pay in view of the present facts and circumstances of the case, the Court cannot direct the insurance company to pay first and then recover. Here, the owner, who is driver, is only liable to pay the compensation to the claimants.

20. Accordingly, this miscellaneous appeal is allowed.

The impugned judgment and award whereby the Motor Vehicle Accident Claim Tribunal directed to the insurance company to pay the awarded amount with interest is hereby set aside. It is held that the insurance company is not liable to pay rather the owner is liable to pay the compensation as awarded by the Claim Tribunal. The insurance company may also recover the amount if paid under Section 140 of the M.V. Act. There shall be no order as to costs.

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(Mungeshwar Sahoo, J)