

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.11.2019
Pronounced On	11.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1356 of 2005

and

C.M.P.No.7469 of 2005

National Insurance Company Ltd.,
Sangagiri Branch ...Appellant/III Opposite Party

vs

1.Govindaraj ...1st Respondent/Applicant
2.P.K.Ramasamy Gounder
3.R.Manickam ...Respondents/Opposite Parties 1 & 2

Prayer: Civil Miscellaneous Appeals filed under Section 30 Workmen's Compensation Act, 1923, against the order of the Learned Commissioner for Workmen's Compensation, Salem made in W.C.No.118 of 2003 dated 13.12.2004.

For appellant : Mr.Srividhya
For R1 : Mr.C.Kanagaraj
RR2 & 3 : Not ready in Notice

J U D G M E N T

Heard learned counsel for the appellant and the 1st respondent. Notice on the owners of the Excavator has not been served. Be that as it may, I do not wish to delay the disposal of the present appeal at the same time.

2.The appellant insurance company is aggrieved by the impugned order dated 13.12.2004 passed by the Deputy Commissioner of labour in W.C.No.118 of 2003. By the impugned order, the Deputy Commissioner of labour has awarded a sum of Rs.3,95,081/-.

3.The 1st respondent had claim compensation for injuries suffered by him on 13.03.2002 while operating Tata Hitachi Hydraulic excavator belonging to the 2nd and 3rd respondents. It

was a case of the 1st respondent that the above insured Excavator (Poclian) capsized resulting in injury to the 1st respondent and he was therefore entitled to get compensation from the employer namely the 2nd and 3rd respondents owners of the aforesaid Excavator. The 1st respondent had claimed sum of Rs.5 lakhs as compensation and since the appellant was the insurer of the aforesaid Excavator, the appellant has been made liable to pay the aforesaid amount.

4. In the present appeal, it is the contention of the appellant that the owners of the Excavator namely the 2nd and 3rd respondents violated the terms of the policy by allowing the 1st respondent to operate the Excavator when indeed the 1st respondent did not possess valid driving license. That apart, the appellant submits that the compensation awarded was excessive and the issue was squarely covered by a decision of the division bench of the Honourable Kerala High Court reported in United India Insurance Company Ltd. Vs Alavi, 1998 ACJ 1048.

5. At the time of admission this court has admitted the appeal on the following questions of law:-

- i. Whether the learned Commissioner can assess the disability at 100% in respect of loss of earning capacity when the Medical Practitioner had assessed the disability at 40%?
- ii. Whether the learned Commissioner is empowered to assess the disability higher than the assessment made by the medical practitioner?
- iii. Whether the learned Commissioner can award compensation as against the Insurer of the vehicle, when the applicant/workman was not having an effective driving licence on the date of accident?

6. There are divergent views of different courts on the subject as to whether an insurer can avoid liability when there is a violation of the terms of the policy.

7. The issue is no longer res-integra. The issue is squarely covered by the decisions of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs Swaran Singh, (2004) 3 SCC 297 and Singh Ram vs Nirmala and Others, (2018) 3 SCC 800. Paragraph Nos. 6 & 7 of Singh Ram case, read as under:-

6. In Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733], this Court held that the holder of a driving licence has a period of thirty days

on its expiry, to renew it: (SCC p. 325, paras 45-46)

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

The following conclusion has been recorded in summation in the judgment: (SCC pp. 341-42, para 110)

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

(iv) Insurance companies, 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.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case."

7. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care [Proposition (vii) of Swaran Singh [National

Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]] since he could not have been unmindful of facts which were within his knowledge.

8.The above observation applies to the four corners of the facts of the present case. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed with liberty to the appellant to pay and recover the amount from the 2nd and 3rd respondents in accordance with law.

9.The present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner for Workmen's Compensation,
Salem.

Copy to
The Section Officer, V.R.Section,
High Court, Madras.

+1 CC to Ms.R. Sreevidya, Advocate sr 99394.

सत्यमेव जयते

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