

CASE NO.:
Appeal (civil) 1731 of 2006

PETITIONER:
National Insurance Co. Ltd.

RESPONDENT:
Kusum Rai & Ors.

DATE OF JUDGMENT: 24/03/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) No.14306 of 2003)

S.B. SINHA, J :

Leave granted.

Respondent No. 3 herein is owner of a jeep bearing registration No. BR 03 P 9011. The said vehicle admittedly was being used as a taxi and, thus, a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi. He used to drive the said vehicle sometimes. He had a driving licence. Driving licence, however, was granted to him for driving a Light Motor Vehicle. The said taxi met with an accident on 14.8.2000 at about 1 p.m. as a result whereof a girl aged about 12 years, Km. Anjali Rai, died.

On an allegation made in that behalf that the said taxi was being driven rashly and negligently by the aforementioned Ram Lal, a claim petition in terms of Sections 163A and 166 of the Motor Vehicles Act, 1988 (for short "the Act") was filed by the First and the Second Respondents herein. The said taxi admittedly was insured with the Appellant herein. One of the issues raised in the said proceeding was as to whether the driver of the said jeep was having a valid and effective licence. Another question which arose was as to whether the said Ram Lal was driving the said vehicle.

The learned Tribunal did not go into the said question. It inter alia held that the said Ram Lal had been driving the said vehicle having regard to the fact that he had been shown as the accused in the criminal case. However, as regard the question as to whether by permitting the said Ram Lal to drive the said vehicle, the Respondent No. 3 herein violated the terms and conditions of contract of licence, the learned Tribunal relying on or on the basis of the decision of this Court in New India Assurance Co., Shimla v. Kamla and Others [(2001) 4 SCC 342] held that the Insurance Company cannot get rid of its third party liability as the said question arises only between the owner of the vehicle and the insurance company. It was further held:

"Insurance Company can recover this amount from owner of vehicle. This legal proposition is fully applicable in this matter. So, Issue No. 3 is decided in favour of Petitioners."

The appeal preferred thereagainst by the Appellant herein before the High Court was dismissed on the premise that no appeal was maintainable wherefor reliance was placed by the High Court on a decision of this Court in National Insurance Company Ltd. Chandigarh v. Nicolletta Rohtagi and Others [JT 2002 (7) SC 251]. As regard the purported statutory liability of

the Appellant, it was held:

"\005the mere fact that there was violation of the terms and conditions subject to which the insurance policy had been issued, cannot have the effect of exonerating the insurer from the statutory liability cast upon him in this regard to pay the amount to the third party victim."

It was further held:

"It will, therefore, be open to the insurer \026 appellant to initiate an appropriate proceeding for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued."

Hence, this appeal.

The contention raised on behalf of the Appellant was that the High Court was palpably in error as violation of the terms and conditions of the contract of insurance is a matter which comes within the purview of any of the 'statutory defences' which can be raised by an insurer under sub-section (2) of Section 149 of the Act. The statutory bar as regards raising a defence on the part of the insurance company is confined to the quantum of damages only.

The learned counsel appearing on behalf of the Respondent conceded that the appeal preferred by the Respondent was maintainable. However, relying on or on the basis of a decision of this Court in Oriental Insurance Co. Ltd. v. Nanjappan and Others [2005 SCC (Cri) 148] he argued that the insurance company may pay the awarded amount to the claimants and recover the same from the owner of the vehicle.

In a proceeding arising out of a claim petition filed under Section 166 of the Motor Vehicles Act, the insurance company is a necessary party as it is required to indemnify the owner or driver of the vehicle. Even in a case where the owner colludes with the claimants or is not otherwise represented, the insurance company can contest the matter on merits of the claim petition upon obtaining leave of the court as is provided under sub-section (2) of Section 170 of the Act. However, there does not exist any embargo in raising a defence which comes within the purview of sub-section (2) of Section 149 of the Act which reads as under:

"149. Duty of insurers to satisfy judgments and award against persons insured in respect of third party risks.

(1)

xxx

xxx

xxx

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:\027 (a) that there has been a breach of a specified condition of the policy, being one of the

following conditions, namely:\027

(i) a condition excluding the use of the vehicle\027

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular."

It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a Light Motor Vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The Appellant, therefore, could raise the said defence.

We have noticed hereinbefore that the Tribunal has not gone into the said question. It proceeded on the basis that the case was covered by Kamla (supra). The correctness of the said decision came up for consideration before this Court in National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 297] wherein this Court clearly held:

"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 it at all e.g. a case where an accident takes place owing to a

mechanical fault or vis major. (See Jitendra Kumar)"

In Swaran Singh (supra), to which one of us was a party, this Court noticed an earlier decision of this Court, namely, Malla Prakasarao v. Malla Janaki and Others [(2004) 3 SCC 343] wherein one of the members of the Bench, V.N. Khare, J. (as the learned Chief Justice then was) was a member. In that case, it was held:

"1. It is not disputed that the driving licence of the driver of the vehicle had expired on 20-11-1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of the contract, the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal."

This Court in Swaran Singh (supra) clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in Swaran Singh (supra) stating:

"Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab",

"motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

The matter came up for consideration again before a Division Bench of this Court in National Insurance Corporation Ltd. V. Kanti Devi (Mrs.) and Others [(2005) 5 SCC 789] wherein this Court upon consideration of the observations made in Swaran Singh (supra) opined:

"12. The decision in Swaran Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case."

In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.

However, in this case the owner has not appeared. The victim was aged only 12 years. The claimants are from a poor background. They must have suffered great mental agony. Therefore, we are of the opinion that it may not be appropriate to push them into another round of litigation particularly when it may be difficult for them to secure the presence of the owner of the vehicle.

In Nanjappan (supra), this Court opined:

"8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take

assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

Although, thus, we are of the opinion that the Appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under Article 136 of the Constitution of India but we direct that the Appellant may recover the amount from the owner in the same manner as was directed in Nanjappan (supra).

For the reasons aforementioned, we decline to interfere with the impugned judgment. The appeal is dismissed accordingly.