



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 1679/2019

United India Insurance Company Ltd,
Through Divisional Manager, Jaipur

-----Appellant

Versus

1. Smt Soniya

2. Kumari Anvi

3. Santlal

4. Mukstkeem

5. Asraf

-----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No. 3496/2019

1. Smt. Soniya

2. Kumari Anvi

3. Santlal



----Appellants

Versus

1. Mustkim
2. Ashraf
3. United India Insurance Company Limited,

----Respondents

For Appellant(s) : Mr. Tripurari Sharma, through VC
 For Respondent(s) : Mr. Ram Sharan Sharma, through VC

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

07/01/2022

REPORTABLE

Both appeals, one by Insurance Company No.1679/2019, and another by claimants No.3496/2019, have been filed against the judgment and award dated 1-3-2019 passed by the Motor Accident Claims Tribunal Alwar (hereafter `the Tribunal`), therefore, are being decided by this common judgment.

2. On filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereafter `the Act of 1988`) the Tribunal awarded a compensation of Rs.47,99,536/- with interest in favour of the claimants and while exonerating the Insurance Company from liability, following the principle of "pay and recover" it was directed that the Insurance Company first will pay the compensation to claimants and then may recover the



same from owner and driver of the vehicle in question. The claim petition was filed in relation to an accident occurred on 3-7-2015 when vehicle in question bearing registration was overturned and in that accident, one Mr.Vinit Moyal died. The vehicle in question was in the ownership of respondent Ashraf and was being driven by respondent Mustkim. The vehicle in question was insured with the United India Insurance Company. The Tribunal has recorded a finding of fact that there is breach of conditions of insurance policy as the driver was not having a valid and effective licence and that the vehicle was not having a route permit and fitness certificate on the date of accident; therefore, the Insurance Company was absolved from the liability to indemnify the insured (owner of the vehicle), however, under the principle of "pay and recover" the Insurance Company was directed to pay the compensation to claimants and then to recover the same from the owner and driver of the vehicle.

सत्यमेव जयते

3. In Appeal (1679/2019) filed by Insurance Company, it has been argued that when the Tribunal itself has held that there is breach of insurance policy then the claim petition ought to have been dismissed against the Insurance Company as a whole and the Tribunal committed an error of law in directing the Insurance Company to pay the compensation amount to claimants and then to recover from



the owner of the vehicle. Counsel for the Insurance Company has raised three points (i) the driver of vehicle was not having a valid and effective licence on the date of accident, (ii) vehicle in question was not having a route permit and fitness certificate on the date of accident, and (iii) the Tribunal has assessed the quantum of compensation on higher side and prayed that impugned judgment be modified suitably.



4. Appeal (3496/2019) has been preferred by claimants for enhancement of compensation. Counsel for claimants has submitted that the Tribunal has not committed any illegality or jurisdictional error in applying the principle of "pay and recover". Since it is clear from the record that the vehicle in question was insured with the Insurance Company, therefore, even if any breach of conditions of insurance policy is found then also considering the beneficial object of the Act of 1988, the Tribunal is justified and well within its jurisdiction in directing the insurer to satisfy the award, though in law it has no liability. The right of the insurer, to recover the amount of award from the owner and driver of vehicle has been protected as well. As far as the quantum of compensation is concerned, the same is rather lower side and deserves to be enhanced suitably, but in any case, the Insurance Company cannot challenge the quantum of compensation as the same travels beyond defences available to Insurance Company



under Section 149(2) of the Act, 1988. Lastly, counsel for the claimants has submitted that in case the appeal filed Insurance Company is dismissed, the claimants would not press their appeal.

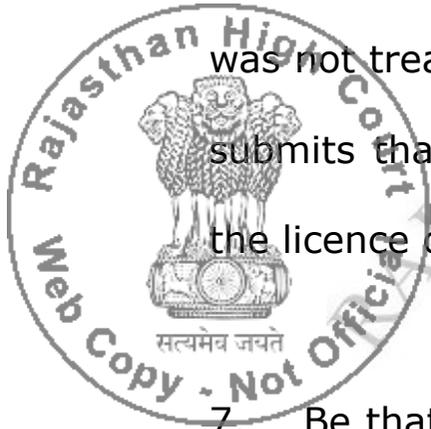
5. Heard learned counsel for both parties and perused the material made available on record.

6. This court is firstly examining the appeal filed by Insurance Company. Counsel for the Insurance Company has argued that while deciding the issue No.3, the Tribunal has recorded a categorical finding of fact that the driver was not having a valid and effective licence on the date of accident i.e. 3-7-2015. A perusal of the record shows that Driver Mustakim was driving vehicle in question having DL-41299/PK/Prof/09, which was issued on 20-11-2009 and the same was valid for a period from 10-8-2011 to 19-11-2015. The Tribunal has relied upon the reports Ex.NA-4 and Ex.NA-5, wherein it was mentioned that aforesaid driving licence is no more valid for any legal purposes as per Transport Commissioner's note dated 28-12-2017, issued in continuance of its earlier note dated 1-8-2014 and as per these orders all driving licences other than Smart Card have been nullified and cancelled. On the basis of these reports, the Tribunal concluded that the Driver was not having a valid and effective licence on the date of accident. It appears from



the record that though the driving licence was issued to Driver and was renewed for a period from 10-8-2011 to 19-11-2015, nevertheless, the same seems to be nullified/ cancelled later on by the Transport Commissioner w.e.f. 1-8-2014, for which a public notice was issued on 18-12-2017.

Thus on the date of accident i.e. 3-7-2015, the driving licence was not treated in effect and operation. Counsel for claimants submits that such conclusion of the Tribunal is perverse and the licence of driver was valid on the date of accident.



7. Be that as it may, it is not in dispute that on the date of accident i.e. 3-7-2015, the vehicle was insured and the insurance policy was in operation from 25-8-2014 to 24-8-2015 and covers the risk of third party. On the strength of such factual position, counsel for the claimants has further argued that even if it is assumed that the driving licence of the driver was cancelled but cancellation order was never brought to the notice of the owner and it is not proved that the owner was guilty of negligence in following the due exercise and reasonable care in the matter of fulfilling the conditions of insurance policy regarding use of vehicle by a duly licenced driver. Counsel for claimants has relied upon the principles of law laid down by the Apex Court in National Insurance Company Vs. Swaran Singh [(2004)3 SCC 297]. Counsel for claimants has submitted that applying the principle of law as propounded by the Apex Court in case of



Swaran Singh's case, in case of third party risk, the insurer has to indemnify the compensation amount payable to third party and the Insurance Company may recover the same from the insured. It has been submitted that the doctrine of "pay and recover" was considered by the Apex Court in Swaran Singh's case (supra), wherein the Apex Court examined the liability of the Insurance Company in case of breach of conditions of policy due to disqualification of driver or invalid driving licence of the driver and held that in case of third party risk, the insurer is to indemnify the compensation amount to third party and the Insurance Company may recover the same from the insured. The Apex court considered the insurer's contractual liability, as well as statutory liability vis-a-vis claims of third parties and guidelines were issued as to how and in what circumstances principle of "pay and recover" may be applied. In para 110 of the judgment in Swaran Singh (supra) the Apex Court has elaborately summarised the points, wherein under the principle of "pay and recover" the insurer is liable to indemnify the compensation to third party and may recover the same from the insured. According to counsel for claimants, even if driving licence of driver is not treated as effective and valid on the date of accident, then also the present case falls within the scope of points (iii), (vii), (ix) and (x) of para 110 of the judgment of Swaran Singh (supra).



8. The ratio of law propounded in case of Swaran Singh (supra) was followed by the Apex Court in case of National Insurance Company Ltd. Vs. Laxmi Narain Dhut [(2007)3 SCC 700]. Later on the correctness of the aforesaid principle of law was doubted by the Apex Court in case of National Insurance Company Limited Vs. Paravathneni [(2009)8 SCC 785] and the issue was referred to Larger Bench. The Apex Court pointed out that "if insurance company is not liable to pay at all, then it cannot be compelled by the order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay compensation amount and later on recover it from the owner of the vehicle". The above reference made in case of Paravathneni (supra) has been disposed on 17-9-2013 by Three Judge Bench keeping the question of law open to be decided in an appropriate case. Thus, presently, the decision in case of Swaran Singh (supra) followed in case of Laxmi Narain Dhut (supra) and other cases holds the field. This principle of law has further been affirmed and followed in case of Shamanna Vs. Divisional Manager, Oriental Insurance Company Limited [(2018)9 SCC 650].

9. After discussion of case law as above, the legal position emerges that till date the principle propounded in case of Swaran Singh (supra) has not been upset in any subsequent decision and still holds the field. Although, prima facie it



appears that the driving licence issued to Driver and renewed for a period from 10-8-2011 to 19-11-2015, the same was later on informed to be cancelled/ nullified vide public notice date 28-12-2017, should not have been treated as invalid and ineffective on the date of accident i.e. 3-7-2015, however, the findings passed by the Tribunal in this regard have not been put to challenge by the claimants, therefore, this court is not inclined to interfere with such findings. Nevertheless, following the principle of law set forth in Swaran Singh's case, it is observed that the Insurance Company has miserably failed to prove that the declaration of cancellation/ nullifying the driving licence of the Driver was ever brought to the knowledge of the owner of vehicle and it is not proved that the owner was guilty of negligence in not following the due care and caution to fulfill the conditions of the insurance policy, therefore, the Tribunal has not committed any error of law in following the principle of "pay and recover". The principle of law propounded in case of Swaran Singh (supra) squarely apply to the present case. Accordingly, the first point is turned down.

10. The second point raised by counsel for Insurance Company regarding not having route permit and fitness certificate of vehicle in question is concerned, counsel for Insurance Company has drawn attention of this court to the findings of issue No.3, wherein the Tribunal has observed that



vehicle in question was not having effective route permit and fitness certificate. Counsel has submitted that vehicle in question is a transport vehicle and the accident was occurred on 3-7-2015 when the vehicle was plying in periphery of village Falsa, Police Station Chopanki District Alwar. It has been argued that the owner was duly served with notices of claim petition as also of this appeal, but he has not appeared and has not produced the permit of vehicle in question. This court also finds that nothing has been brought on record by the insured (owner of vehicle) to prove that he had a valid permit of vehicle on 3-7-2015. The prayer is that for this breach of policy condition, the claim petition be dismissed qua Insurance Company.

11. In the Act of 1988, the term "motor vehicle" or "vehicle" is defined under Section 2(28); the term "permit" in Section 2(31), and "transport vehicle" is defined in Section 2(47) of the Act of 1988. Section 66 of the Act of 1988 stipulates the necessity of "permit". Sub-section (1) thereof provides that no owner of a motor vehicle shall use or permit the use of vehicle as a transport vehicle in any public place, whether or not, such vehicle is actually carrying passengers or goods save in accordance with conditions of a permit granted or countersigned by a Regional or State Transport Authority or any Prescribed Authority. Various provisos have been appended to the main provisions stipulating conditions



for use of vehicle, and carriage goods vehicle. It is apt to note here that sub-section 3 of Section 66 of the Act of 1988 carves out actions to sub-section (1). Section 149(2)(a)(i) relates to a vehicle not covered by a permit for hire or reward. Section 149(2) provides statutory defences to the insurer to contest claim petitions. Sub-section 7 of Section 147 provides that insurer to whom notice referred to sub-section 2 or 3 has been given shall be entitled to avoid the liability to pay any person any benefit. No such judgment and award as is referred in sub-section 1 or no such judgment and award as referred in sub-section 3 otherwise than in the manner provided for in sub-section 4 or any corresponding law can be passed. It is clear that in case the insured vehicle does not have a valid permit, the same falls within breach of conditions of policy as enumerated under Section 149(2) of the Act of 1988.

12. In case at hand, nothing has been brought on record by the insured to prove that he had a valid permit of vehicle and the Tribunal has recorded findings in favour of the insurer holding that in absence of a valid route permit/ permit the insured has committed a breach of conditions of policy and as such the insurer has been absolved to indemnify the insured. Nevertheless, the Tribunal has considered the fact that vehicle in question was insured with the insurer and insurance policy is valid for a period from 25-8-2014 to 24-8-



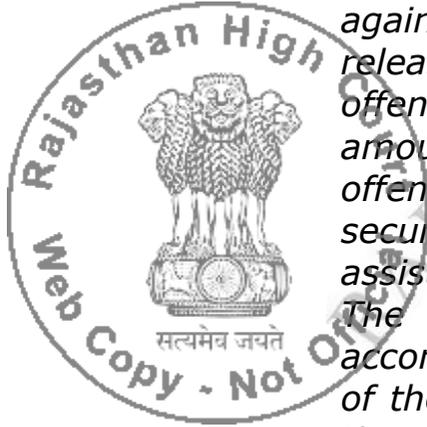
2015 (accident occurred on 3-7-2015). Considering the beneficial object of the Act, the insurer was directed to satisfy the award to claimants giving him option and liberty to recover the amount from the insured.

13. As far as this direction issued against the Insurance Company to first pay the compensation to claimants and then to recover from the insured/ driver of vehicle are concerned, the issue has examined by the Hon'ble Supreme Court in detail in National Insurance Co. Ltd. Vs. Challa Bharathamma [(2004)8 SCC 517].

14. The issue as to when Insurance Company is entitled to be absolved from the liability to pay compensation due to having no valid permit of vehicle in question, then whether it can be directed to indemnify the compensation first to claimants and then to recover from the insured. The Hon'ble Supreme Court observed that plying vehicle without a permit is a infraction and same is breach of conditions of insurance policy in view of Section 66 of the Act of 1988. For such breach, defence is available to the insurer in terms of Section 149(2) of the Act fo 1988. The Hon'ble Supreme Court while allowing payment of compensation by Insurance Company first and giving liberty/ right to Insurance Company to recover the same from owner/ driver of vehicle has opined as under:-



"The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, 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 claimants, owner of the offending vehicle shall 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 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 i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."



15. The judgment in the case of Challa Bharathamma (supra) has been followed in case of Amrit Paul Singh Vs. Tata AIG General Insurance Company [(2018)7 SCC 558].

16. In present case the insurance policy was in operation for a period from 25-8-2014 to 24-8-2015 and accident occurred on 3-7-2015. Thus the Tribunal has directed the Insurance Company to pay the compensation to claimants who are covered under the policy. The Tribunal has also observed in clear terms that Insurance Company would deposit the compensation amount payable to claimants and then would be entitled to recover the compensation amount from the



owner and driver of vehicle in question. This court makes it clear that as far as such recovery rights given to Insurance Company against owner/ driver of vehicle are concerned would be treated in context of principles of law laid down in case of Challa Bharathamma (supra). Thus, insurer is not required to file a separate suit, in order to certify his right to recover the amount from owner and driver of vehicle and may directly initiate proceedings before the Executing Court concerned, as the dispute between the insurer and owner/ driver of vehicle was subject matter of determination before the Tribunal and the issue has been decided against the owner and driver in favour of the insurer. Thus on second point also the prayer of the Insurance Company to dismiss claim petition as a whole against the claimants due to having no valid permit of vehicle is not acceptable and same is turned down.

17. As far as quantum of compensation is concerned, the Tribunal has assessed the compensation after considering material on record and after due application of relevant rules and law. The compensation awarded by the Tribunal is just and proper. The Insurance Company has failed to point out any illegality or perversity in this regard. Thus, there is no force in third point raised by the Insurance Company.



18. The upshot of aforesaid discussion is that appeal filed by Insurance Company fails and deserves to be dismissed. According dismissed.

19. Since, this court has not find any merit in the appeal filed by Insurance Company and has dismissed the same, therefore, counsel for the claimants does not press the appeal of claimants for enhancement of compensation. Accordingly, the appeal filed by claimants is dismissed as not press.

20. A perusal of record reveals that Insurance Company has deposited entire compensation amount before the Tribunal pursuant to interim order dated 12-4-2019, out of which 50% amount of compensation has been disbursed to claimants according to order dated 5-8-2021 and therefore, remaining amount so deposited be also disbursed to claimants in terms of the award.

21. Stay application, application for vacations of stay order and other applications, if pending, are also disposed of accordingly. There is no order as to costs.

22. Record of the case be sent back forthwith.

(SUDESH BANSAL),J

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