REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 20962 OF 2017
(Arising out of SLP(C) No.29032 of 2015)

PAPPU AND ORS. .....APPELLANT(S)

:Versus:

VINOD KUMAR LAMBA AND ANR. .....RESPONDENT(S)

J U D G M E N T

A.M. Khanwilkar, J.

1. This appeal questions the legality and tenability of the judgment of the High Court of Judicature at Allahabad in First Appeal from Order No.1138 of 2000, dated 9th October, 2014, whereby the appeal filed by the appellants was dismissed by the High Court whilst rejecting the only question raised before it regarding absolving the Insurance Company (Respondent No.2) from any liability in respect of truck bearing No.DIL-5955, which was duly insured by respondent No.2 Insurance Company, on the ground that the same was not driven by a person having a valid licence, as found by the Motor Accident Claims Tribunal, District Allahabad in Claim Petition No.215 of 1999.

2. In the claim petition it was asserted that on 12.08.1995 Om Prakash, son of Satku Lal, was driving Truck No.URS-2735 when it was knocked down by a rashly and negligently driven Truck No.DIL-5955 coming from the opposite direction, as a result of which Om Prakash succumbed to fatal injuries. The claim petition was filed by the widow of deceased Om Prakash. Om Prakash left behind his children Pappu, aged 16 years, Ramu, 12 years, Kumari Geeta, 14 years, Kumari Neetu, 10 years, Kumari Guriya, 8 years and his mother, Smt. Shiv Rani, at the time of the accident. The widow of deceased Om Prakash claimed compensation of Rs.7 lakh under Fault Liability and Rs.25,000/- under No Fault Liability. The mother of Om Prakash claimed compensation of Rs.50,000/- separately. On the date of the accident, Om Prakash was around 35 years of age and was a driver by profession.

3. In the context of the sole contention raised before the High Court and reiterated before this Court, it is not necessary for us to dilate on factual aspects considered by the Tribunal except to state that the Tribunal, on analysis of the evidence on record, held that Om Prakash died because of the accident

caused by rash and negligent driving of Truck No.DIL-5955. Although the Tribunal allowed the claim petition in part, it absolved respondent No.2 Insurance Company by dismissing the claim petition against the said respondent. The Tribunal awarded a sum of Rs.25,000/- to opposite party No.3 Shiv Rani and Rs.1,75,000/- to claimant Nos.1 to 6, with interest at the rate of 12% per annum from the date of petition till the date of payment. In other words, the claim petition was partly allowed against respondent No.1 - the owner of the offending vehicle DIL-5955.

4. In the appeal preferred by the appellants/claimants against the said decision, the only question urged before the High Court was about the correctness of the view taken by the Tribunal in absolving the respondent No.2 Insurance Company even though the offending Truck No.DIL-5955 was duly insured by the said Insurance Company. The High Court affirmed the view taken by the Tribunal that there was no pleading or any evidence adduced by the owner of the offending Truck to substantiate the fact that the Truck was driven by one Joginder Singh, whose driving licence was produced on record. The High Court also noted that there

could be no presumption that Joginder Singh was driving the offending vehicle. The appellants have assailed the aforesaid view taken by the Tribunal and affirmed by the High Court.

5. According to the appellants, the Insurance Company did not produce any evidence before the Tribunal. As a result, it was not open to the respondent No.2 Insurance Company to extricate itself from the liability, having duly insured the offending vehicle DIL-5955, which fact has been substantiated by production of the Insurance Policy. A defence being available to the Insurance Company, that the offending vehicle was not driven by an authorised person and/or person not having a valid driving licence, it was obligatory on the part of the Insurance Company to substantiate that defence and more so, to rebut the plea taken by the owner of the offending vehicle that the offending vehicle was being driven by an authorised person having a valid driving licence. To buttress this argument, reliance has been placed on the decision of this Court in the case of ***National Insurance Co. Ltd. Vs. Swarn Singh and Ors.***[1]

[1] (2004) 3 SCC 297

6. We have heard Mr. Sharve Singh, learned counsel appearing for the appellants and Mr. Rishi Malhotra, learned counsel appearing for the Insurance Company.

7. In the context of the issue that arises for our consideration, we may first advert to the claim petition. In the claim petition, the name of the driver of the offending vehicle DIL-5955 has not been mentioned. The assertion made in the claim petition is that Truck No.URS-2735 driven by Om Prakash was knocked down by the offending Truck No.DIL-5955 coming from the opposite direction by rash and negligent driving. The reply filed by respondent No.1 – owner of the offending Truck DIL-5955 also does not mention the name of the driver of the offending Truck No.DIL-5955. Indeed, the reply filed by respondent No.1 asserts that the vehicle No.DIL-5955 was comprehensively insured by the respondent No.2 Insurance Company for unlimited liability. The details of the Insurance Certificate have been mentioned in the Written Statement. In paragraph 18 of the Written Statement, however, a vague assertion has been made that on the alleged date of incident, the offending vehicle DIL-5955

was plied by an authorised person having a valid driving permit.

8. In the Written Statement filed by the respondent No.2 Insurance Company to oppose the claim petition, it is asserted that the claimants should be put to strict proof about the occurrence of the accident and other related matters. It is then asserted that no insurance is directly issued by the Head Office of respondent No.2. The name of the Branch Office by which the vehicle in question was allegedly insured has not been disclosed and in its absence, it was difficult to trace out the insurance policy. Further, the original insurance policy will have to be summoned from the Insurer or owner of the vehicle. It is then asserted that neither has the alleged owner of the vehicle (respondent No.1) informed about any claim nor have the claimants made any claim to the Insurance Company. As regards the plea taken by respondent No.1 - owner of the offending vehicle, in paragraph 29 of the Written Statement, it has been asserted by respondent No.2 as follows:

> "29. *That in petition anywhere or in column 16 of the petition details or driving licence of the alleged driver are not given and in absence of details it is quite impossible for answering opposite party to ascertain the driving licence and its validity on the alleged date of accident, hence the driving licence if any and its validity on the*

> *alleged date of accident is denied. The answering opposite party could not be held liable for payment of any award if made, unless it is proved that the vehicle allegedly involved in the alleged accident was driving under valid driving licence by its authorized driver with due permission and under control of its owner and under valid road, permit, fitness, road tax etc. as required under the provisions of M.V. Act and also was driven with full compliance of the terms and conditions of the alleged insurance policy.*"

It is not necessary to reproduce the other averments in the Written Statement filed by respondent No.2.

9. On the basis of these pleadings, the matter proceeded before the Tribunal. Admittedly, the respondent No.1 - owner of the vehicle did not produce any evidence in support of his plea taken in the Written Statement that the offending vehicle was plied by an authorised person having a valid driving permit. All that respondent No.1 did was to produce a driving licence purportedly of one Joginder Singh. The Tribunal adverted to the said driving licence but found that nowhere the owner of the vehicle has asserted that the Truck No.DIL-5955 was in fact driven by said Joginder Singh at the time of the accident. On the basis of the pleadings, the Tribunal framed issue No.3 and answered the same in favour of the Insurance Company as follows:

> "***Issue No.3:*** *Whether the Truck No. DIL-5955 was not being driven by a person having valid and effective driving licence?*
>
> *As it has been stated earlier, that the owner of Truck No. DIL-5955 has filed original driving licence of one Joginder Singh but he has not mentioned anywhere that Joginder Singh was driving his truck at the time of accident. The owner has filed photo copy of insurance policy in which at paragraph 5 proviso A, it is written that the insurance company will be liable when driver was holding a valid and effective driving licence. The owner of the vehicle has not proved that his driver was holding a valid and effective driving licence. This issue is decided in the negative.*"

10. This view taken by the Tribunal was assailed before the High Court by the claimants. No other contention was raised before the High Court except about the liability of the Insurance Company. The High Court, after analysing the record, negatived the said contention in the following words:

> "*5. The only question which has been raised before this Court is, whether Insurance Company has rightly been held not liable by holding that Truck No. DIL 5955 was not being driven by a person having valid licence. This Court has to consider, whether findings recorded in respect of issue no.3 is correct or not.*
>
> *6. Learned counsel for the appellants could not dispute that neither any pleadings nor evidence have been led before Tribunal to suggest or to tell, as a matter of fact, that aforesaid truck was being driven by Sri Joginder Singh. It is not in dispute that owner of aforesaid vehicle produced driving licence which was in the name of Sri Joginder Singh but at no stage it is pleaded or brought on*

> *record before Tribunal that Sri Joginder Singh was the person who was driving aforesaid Truck. This fact has been noticed by Tribunal in the impugned order as under.*
>
> *'Joginder Singh Ko Prastut Kiya Gaya Hai Parantu Joginder Singh Truck No. 5955 Ka Chalak Tha Yah Kahi Par Bhi Nahi Kaha Gaya Hai.'*
>
> *7. Learned counsel for the appellants could not dispute this fact. In view of above statement of fact that it was not pleaded or proved before Tribunal, the mere production of driving licence of Sri Joginder Singh, by owner of vehicle, cannot raise a presumption that he was a person who was driving vehicle. The findings recorded by Tribunal, therefore, cannot be faulted in any manner. No other argument has been advanced.*"

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.

12. In the present case, the Tribunal has accepted the claim of the appellants. It has, however, absolved the respondent No.2 Insurance Company from any liability for just reasons. The High Court has also affirmed that view. It rightly held that

there can be no presumption that Joginder Singh was driving the offending vehicle at the relevant time.

13. Be that as it may, no grievance about the quantum of compensation awarded by the Tribunal has been made by the appellants – claimants (either before the High Court or before us in this appeal). Hence, that issue does not warrant any scrutiny. Similarly, the owner of the vehicle (respondent No.1) has not challenged the findings of the Tribunal as affirmed by the High Court in favour of the insurer (respondent No.2), including on the factum that the vehicle was driven by a person who did not have a valid driving licence at the relevant time.

14. The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (respondent No.1)? This issue has been answered in the case of National Insurance Company Ltd. (supra). In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the

vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In paragraph 107, the Court then observed thus:

> *"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."*

Further, in paragraph No.110, the Court observed thus:

> *110. The summary of our findings to the various issues as raised in these petitions are as follows:*
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> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.*
>
> *(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.*
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> *(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 where for would be on them.*
>
> *(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance 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 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 insured 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.

(viii) xxx

(ix) xxx

(x) ***Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.***

(xi) ***The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are***

> ***intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."***
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> (emphasis supplied)

15. In the present case, the owner of the vehicle (respondent No.1) had produced the insurance certificate indicating that vehicle No. DIL- 5955 was comprehensively insured by the respondent No.2 (Insurance Company) for unlimited liability. Applying the dictum in the case of National Insurance Company Ltd. (supra), to subserve the ends of justice, the insurer (respondent No.2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (respondent No.1) in accordance with law.

16. Accordingly, the appeal is allowed to the extent that the compensation amount awarded by the Tribunal and confirmed by the High Court shall be paid and satisfied by the insurer (respondent No.2) in the first instance, with liberty to recover

the same from the owner of the vehicle (respondent No.1) in accordance with law.

17. Appeal is disposed of in the aforementioned terms with no order as to costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
January 19, 2018.