
Before K.S. Garewal & Pritam Pal, JJ.

NATIONAL INSURANCE CO. LTD.,—Appellant

versus

SMT. URMILA AND OTHERS,—Respondents

F.A.O. NO. 856 OF 2006

10th February, 2006

Motor Vehicles Act, 1988—Ss. 134(c) & 149(2)—Hiring of a vehicle for ferrying animals from a village for purpose of sale—Accident occurring when vehicle was returning to village after selling the animals—Death of the hirer—Whether travelling in a goods vehicle can be termed to be an unauthorized/gratuitous passenger—Held, no—No violation of the terms and conditions of the insurance policy till the owner of the goods reaches the place from where he had hired the insured vehicle—Insurer's appeal dismissed.

Held, that admittedly the vehicle was duly insured with the appellant at the time of accident. It is also well proved on the file that the driver of the offending vehicle was having valid and effective driving licence at the time of occurrence. It is further apparent on the file, rather an admitted fact, that Dilbag Singh (since deceased) had hired the offending vehicle from his village Kabja Nagar, Tehsil Dadri, District Bhiwani for carrying his animals for the purpose of selling to Pashu Hatwara at Jaipur and on the day of occurrence of the accident, after selling his animals, he was returning to his village in the same vehicle when the said vehicle met with an accident. It is nowhere pleaded or proved by the appellant that return journey of owner of the goods/animals, after selling the same, would amount to any violation of the terms and conditions of the insurance policy especially when the owner of the goods was coming to the place from where he had hired such goods vehicle. It is well established on the file that on the day of occurrence of the accident, Dilbag Singh deceased, after selling his animals, was returning to his village from where he had hired the aforesaid offending vehicle. In this view of the matter, we are of the considered opinion that Dilbag Singh (deceased) cannot be termed to be an unauthorized/gratuitous passenger in the insured vehicle till he reaches the place from where he had hired the insured vehicle.

(Paras 9 & 10)

D.K. Dogra, Advocate, for the appellant-Insurance
Company.

JUDGMENT**PRITAM PAL, J.**

(1) This appeal by National Insurance Company Limited (hereinafter referred to as "the Insurer"), is directed against the award dated September 22, 2005, passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as "the Tribunal") whereby respondent Nos. 1 to 3 (claimants) were given compensation to the tune of Rs. 4,00,000 on account of death of Dilbag Singh (40 years).

(2) In nutshell, the facts culminating to the commencement of this appeal may be recapitulated thus :

(3) On March 22, 2003, Dilbag Singh (since deceased) had hired a TATA-407 vehicle bearing registration No. HR-61/1610 owned and driven by respondent No. 4, Jaibir for taking his animals from his village Kabza Nagar, Tehsil Dadri, District Bhiwani for selling them at Pashu Hatwara, Jaipur. After selling his animals, the deceased was returning in the said vehicle being driven by respondent No. 4, Jaibir (Driver-cum-owner/insured). The said vehicle was being driven rashly and negligently. At about 9.00 P.M., when the said vehicle reached within the area of Nai Ki Thadi Pashu Hatwari, Near Police Station Amer Jaipur, Jaibir, respondent No. 4 lost his control over the vehicle as a result of which, it turned turtle and Dilbag Singh suffered numerous injuries and later on succumbed to the same. F.I.R. was lodged against respondent No. 4, Owner/Driver of the vehicle. Smt. Urmila, widow, Ms. Amesha Kumari, minor daughter and Parveen Kumar minor son of Dilbag Singh (since deceased) filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") claiming therein that Dilbag Singh (deceased) was having monthly income of Rs. 15,000 from the trading of animals as well as from his agricultural earnings.

(4) Upon notice, respondent No. 4 pleaded that while returning after selling buffalos of Dilbag Singh (deceased), one *neel gai* came on the road and to avoid any mishap, he took a turn and in that process, balance of the vehicle was disturbed as a result of which, it turned-turtle and as such, there was no rash and negligent driving on his part.

(5) On the other hand, the appellant-Insurer in its written statement pleaded that there was no liability of the appellant as there was breach of specified terms and conditions of the insurance policy as well as provisions of Section 149(2), 134(c) etc. of the Act as at the time of accident, the deceased was travelling in a goods vehicle as an unauthorized/gratuitous passenger. It was further pleaded that since the deceased was no longer the owner of the goods at the time of accident and was travelling in violation of the insurance policy, therefore, the appellant had no liability to pay the compensation.

Learned Tribunal, on the pleadings of the parties, had framed the following issues :—

1. Whether the accident which took place on 22nd March, 2003 was because of rash and negligent driving of respondent No. 1 while driving Tata-407 bearing registration No. HR-61/1610 ; if so, its effect ? OPP
2. Whether petitioners are entitled to receive amount of compensation; if so, how much and from whom ? OPP
3. Whether the present claim petition is not maintainable in the present form ? OPR
4. Whether the insured has wilfully violated the terms and conditions of the insurance policy ? OPR2
5. Whether respondent No. 1 was not holding the valid and effective driving licence on the date of accident; if so, its effect ? OPR2
6. Relief.”

(6) After recording the evidence and hearing counsel for the parties, finding on issue No. 1 was returned in favour of the claimants and against respondent No. 4 as well as the appellant. Under issue No. 2, the claimants were found entitled to the total compensation of Rs. 4,00,000 with interest at the rate of 7.5% per annum to be paid by the appellant and respondent No. 4 jointly and severally to the claimants. Findings on issue Nos. 3 to 5 were also returned in favour of the claimants as well as respondent No. 4 but against the appellant. Ultimately, the claim petition filed by respondent Nos. 1 to 3 (claimants) was decided in their favour in the terms as indicated above. This is how, feeling aggrieved, Insurer has come up in this appeal.

(7) We have heard learned counsel for the parties and have also gone through the file carefully.

(8) The only point of argument raised on behalf of the appellant at the time of hearing of this appeal is that since deceased Dilbag Singh was no longer the owner of goods (which had already been sold) at the time of accident, therefore, he was an unauthorized/gratuitous passenger. So the Insurer could not have been held liable to discharge the liability fastened upon it in the award by the learned Tribunal.

(9) Admittedly, the vehicle was duly insured with the appellant at the time of accident. It is also well proved on the file that the driver of the offending vehicle was having valid and effective driving licence at the time of occurrence. It is further apparent on the file, rather an admitted fact, that Dilbag Singh (since deceased) had hired the offending vehicle from his village Kabja Nagar, Tehsil Dadri, District Bhiwani for carrying his animals for the purpose of selling to Pashu Hatwara at Jaipur and on the day of occurrence of the accident, after selling his animals, he was returning to his village in the same vehicle when the said vehicle met with an accident in the aforesaid manner. It is nowhere pleaded or proved by the appellant that return-journey of owner of the goods/animals, after selling the same, would amount to any violation of the terms and conditions of the insurance policy especially when the owner of the goods was coming to the place from where he had hired such goods-vehicle.

(10) Here, in the instant case, it is well established on the file that on the day of occurrence of the accident, Dilbag Singh deceased, after selling his animals, was returning to his village from where he had hired the aforesaid offending vehicle. In this view of the matter, we are of the considered opinion that Dilbag Singh (deceased) cannot be termed to be an unauthorized/gratuitous passenger in the insured vehicle till he reaches the place from where he had hired the insured vehicle.

(11) In view of our foregoing discussion, we find no force in the aforesaid plea of the appellant-Insurer. Hence, the same is devoid of any merit.

(12) No other point has been urged or argued.

(13) This appeal is hereby dismissed *in limini*.

R.N.R.