Supreme Court of India
National Insurance Co. Ltd vs Mrs. Kanti Devi & Ors on 9 May, 2005
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  3197 of 2005

PETITIONER:
National Insurance Co. Ltd

RESPONDENT:
Mrs. Kanti Devi & Ors

DATE OF JUDGMENT: 09/05/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (C) No.22703 of 2003) ARIJIT PASAYAT, J.

Leave granted.

National Insurance Company Limited (hereinafter referred to as the 'insurer') calls in question legality of the judgment rendered by a learned Single Judge of the Delhi High Court dismissing the appeal filed by it.

Questioning the award made by the Motor Accident Claims Tribunal, Karkardooma Courts, Delhi (in short 'MACT'), the appeal was filed before the High Court. By the aforesaid award the MACT had held that the respondent no.1 Mrs. Kanti Devi (hereinafter referred to as the 'claimant') was entitled to compensation of Rs.2,24,800/- together with 8% interest from the date of filing of claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') i.e. 30.11.1998 till realization of the award excluding certain periods (i.e. from 30.11.1998 to 1.8.2000 and 10.9.2001 to 4.2.2002). The insurer was held liable to compensate the claimant.

Background facts as projected by the claimant in the claim petition were that her son Pradeep Kumar lost his life on 4.10.1998 on account of vehicular accident involving Tata Tempo No. DL-1-B-8441 which was allegedly being driven rashly and negligently by Rohani Prasad respondent no.2 (hereinafter referred to as the 'driver'). The deceased was aged about 22 years at the time of the accident. The offending vehicle belonged to Devender Kumar, (respondent no.3) (hereinafter referred to as the 'insured'). Before the Tribunal the driver and the owner did not appear.

Stand of the insurer before the MACT was that the driver did not possess a valid driving licence, as the driving licence authorised driving of light motor vehicles (private), while driver was driving a transport vehicle (Tata Truck-407). The MACT held that there was nothing to show that the driving licence was fake and that plying of the vehicle involved amounted to breach of conditions of the

insurance policy issued by the insurer. It was held that the insurer was to satisfy the award, with right of recovery from the insured. This part of observation of the MACT which led to fastening of liability on the insurer was challenged before the High Court. By the impugned order the High Court dismissed the appeal holding that in view of the decision of this Court in United India Insurance Co. Ltd. v. Lehru and Ors. (2003 (3) SCC 338) the insurance company cannot escape its liability to pay compensation to the claimant when it has been given right to recover the compensation from the insured.

In support of the appeal, learned counsel for the appellant submitted that the High Court's view is untenable in view of what has been said by a three-Judge Bench decision of this Court in National Insurance Co. Ltd. v. Swaran Singh and Ors. (2004 (3) SCC 297). There is no appearance on behalf of the respondents in spite of service of notice.

In Swaran Singh's case (supra) this Court dealt with scope and ambit of Section 149(2)(a)(ii) vis-`-vis proviso appended to sub-section (4) and sub-section(5) thereof. While dealing with cases where the driver who has been granted licence for one type of vehicle at the relevant time was driving another type of vehicle. In para 89 it was observed as follows:

"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 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."

In para 101 the effect of a driving licence being found fake was considered. It was noted as followed:

"The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

Obviously, defence can be raised by the insurer about the licence being fake. By analogy, the insurer can also take a defence that the driver did not have the requisite driving licence to drive a particular type of vehicle. Such defence can be raised and it will be for the insurer to prove that the insured did not take adequate care and caution to verify genuineness or otherwise of the licence held by the driver. The effect of the evidence in this regard has to be considered by the concerned Tribunal.

In the instant case, the High Court did not go into the relevant questions at all and relying on Lehru's case (supra) held that the insurer has to pay the amount and recover from the insured. It has to be noted that in Swaran Singh's case (supra) the earlier decision in Lehru's case (supra) was noted. In para 108 of the judgment it was noted as follows:

"Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent."

The essence of Lehru's case (supra) was delineated in paras 92 and 100 as follows:

"92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru's case the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later."

"100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

The decision in Swaran Singh's case (supra) was not before either the MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to the 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's case (supra).

Keeping in view long pendency of the matter, the MACT would do well to dispose of the matter within six months from today.

The appeal is accordingly disposed of with no order as to costs.