

A NATIONAL INSURANCE COMPANY LTD.

v.

MEENA AGGARWAL
(Civil Appeal No. 396 of 2009)

B JANUARY 23, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

MOTOR VEHICLES ACT, 1988:

C *Motor vehicle accident – Vehicle badly damaged –*
Insurance claim – Rejected on the grounds that the driver of
the vehicle did not possess a valid driving licence and though
the private vehicle was insured for personal use, it was used
D *as a taxi when the accident occurred – District Consumer*
Forum rejected the claim – State Commission allowed the
claim – Upheld by National Commission – On appeal, Held:
State Commission and National Commission in their orders
did not indicate reason for coming to the conclusion that there
E *was no fundamental breach of the terms of the insurance*
policy – Hence set aside.

The appellant Insurance Company rejected the claim
for damages to an insured vehicle on the grounds that
the driver of the vehicle did not possess a valid driving
F licence and that the insured vehicle was a private vehicle
insured for personal use, but was used as a taxi when
the accident occurred.

The District Consumer Forum also rejected the claim
of the insured. The State Commission allowed the appeal
and held that even if the vehicle was being used as a taxi,
there was no fundamental breach of the terms of the
insurance policy. On appeal, the National Commission
held that even though the vehicle was being used as a
G

taxi and the driver did not have a valid driving licence, there was no fundamental breach of the terms of the policy. Hence the appeal by the Insurance Company.

Allowing the appeal, the Court

HELD: 1. In a case of this nature, 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. [Para 6] [497-C]

National Insurance Co. Ltd. v. Swaran Singh 2004(3) SCC 297 and *National Insurance Corpn. Ltd. v. Kanti Devi* 2005 (5))SCC 789, relied on.

National Insurance Co. Ltd. v. Kusum Rai, 2006(4) SCC 250, distinguished.

2. The State Commission and the National Commission have not practically indicated any reason for coming to the conclusion that there was no fundamental breach of the terms of the policy. Both the State Commission and the National Commission observed that the vehicle was being driven by a person who did not have a valid driving licence. In addition to that the vehicle which was insured for personal use was used for commercial purposes. [Para 9] [497-F]

3. Looked at from any angle the impugned orders of the State Commission and the National Commission are unsustainable, deserve to be set aside. [Para 10] [497-G]

Case Law Reference:

2004(3) SCC 297	relied on	Para 4
2005(5) SCC 789	relied on	Para 5
2006(4) SCC 250	distinguished	Para 7

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 396
of 2009.

From the Judgment and final Order dated 3.07.2006 of the
National Consumer Disputes Redressal Commission, New
Delhi in Revision Petition No. 145 of 2006.

B S.L. Gupta, Ram Lal Kadamb, Goodwill Indeevar and A.V.
Sharma for the Appellant.

The Judgement of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.1.** Leave granted.

2. Challenge in this appeal is to the order passed by the
National Consumer Disputes Redressal Commission, New
Delhi, (in short the 'National Commission').

D 3. Background facts in a nutshell are as follows:

E Respondent was the owner of a vehicle- a Maruti van which
was the subject matter of insurance with the present appellant
for a period from 27.1.2003 to 26.1.2004. The Vehicle in
question met with an accident on 12.6.2003 and was badly
damaged. The estimate of the cost of repair was prepared by
Automobiles Satya of Bilaspur. According to him the estimated
expenditure on total repair of the vehicle was Rs.2,00,000/-.
F Intimation of the same was given by the complainant to the
present appellant and claim was made. The same was
rejected on the ground that the driver of the vehicle did not
possess a valid driving licence and the vehicle which was a
private vehicle was insured for personal use, but was being
used as a taxi for carrying marriage parties. a marriage party
G was being transported in the vehicle after charging rent of
Rs.2100/- when the accident occurred. The driver did not
possess a valid licence and, therefore, the vehicle was being
plied against the terms of the insurance policy. The District
Consumer Disputes Redressal Forum Sarguja, Ambikapur
H Chhattisgarh, rejected the claim petition. An appeal was

preferred before the State Consumer Dispute Redressal Commission, Rajpur (in short the 'State Commission'). By order dated 17.10.2005, the appeal was allowed. It was held that it would be proper to declare the claim of complainant as "Non-standard" consequent to the violation and breach. Therefore, the present appellant was directed to pay Rs.90,000/- i.e. 75% of Rs.1,20,000/- i.e. the amount assessed by the surveyor of the insurance company along with 9% interest. The only reason given by the State Commission was that even if the vehicle was being used as a taxi, there was no fundamental breach of the terms of the policy. A revision petition was filed before the National Commission which came to be dismissed by the impugned order. The National Commission held that even though the vehicle was being used as a commercial vehicle and the driver did not have a valid driving licence, there was no fundamental breach of the terms of the policy.

According to the appellant the insured vehicle was being used as a commercial vehicle, and the driver of the vehicle is required to hold an appropriate licence. If the driver who was driving the vehicle at a relevant point of time did not possess any licence to drive a commercial vehicle, there is a breach of the conditions of the policy and such plea was available to be raised as a defence.

4. This Court in *National Insurance Co. Ltd. v. Swaran Singh* [2004(3) SCC 297] 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-à-vis* the driver being not possessed of a valid licence was considered in *Swaran Singh's* case stating:

"89. 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

- A 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:
- B (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
- C 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',
- D '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
- E 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
- F 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
- G 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."
- H 5. The matter came up for consideration again before this

Court in *National Insurance Corpn. Ltd. v. Kanti Devi* [2005 (5))SCC 789] wherein this Court upon consideration of the observations made in Swaran Singh's case 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."

6. 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.

7. The aforesaid aspect was thereafter highlighted in *National Insurance Co. Ltd. v. Kusum Rai* [2006(4) SCC 250]. The said case related to the liability in the case of a third party. In the instant case, no such claim is involved and the claim is related to the damage of a vehicle.

8. The respondent has not appeared in spite of service of notice.

9. We find that the State Commission and the National Commission have not practically indicated any reason for coming to the conclusion that there was no fundamental breach of the terms of the policy. Both the State Commission and the National Commission observed that the vehicle was being driven by a person who did not have a valid driving licence. In addition to that the vehicle which was insured for personal use was used for commercial purposes.

10. Looked at from any angle the impugned orders of the State Commission and the National Commission are unsustainable, deserve to be set aside, which we direct. No costs.

G.N.

Appeal allowed.