(2012) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2065 of 2010 (in MACT Case RBT No. 289 of 2008 of 2009)

Bajaj Allianz General Insurance Company Ltd. APPELLANT

Vs

Inderjeet and Others RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 10, 14, 18, 2(10), 2(14)

Citation : (2013) ACJ 2010 : (2013) 1 RCR(Civil) 804

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Subhash Goyal, for the Appellant; Ashish Yadav, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The present appeal has been preferred by the appellant - Insurance Company for setting aside the impugned award dated 4.2.2010 passed by the Motor Accident Claims Tribunal, Rewari, vide which the driver, owner and appellant Insurance Company has been held liable to satisfy the award jointly and severally. Brief facts of the case are that on 23.7.2008, at about 9.00 a.m. the claimant Inderjeet, along with his cousin brother Anil Kumar was going to their village Khori, on TVS motorcycle after performing duties at NRL Petrol Pump situated on National Highway No. 8. When they crossed Agriculture University, the offending three wheeler bearing registration No. HR-47A/2490 being driven by Satyapal, in a rash and negligent manner struck against the motorcycle of Inderjeet. As a result, both occupants of motorcycle fell down and received multiple injuries. However, the driver of the offending vehicle fled away from the place of occurrence.

2. The claimant-respondents preferred claim petition bearing No. 289 of 2008/2009 before the Motor Accident Claims Tribunal Rewari, which was accepted by the learned Tribunal and an amount of Rs. 1,24,399/- was awarded

as compensation in favour of claimants while holding the owner, driver and appellant-Insurance company liable to make the payment jointly and severally.

3. Feeling dissatisfied, the appellant-Insurance Company came up in the present appeal.

4. Learned counsel for the appellant contends that the driver of the offending vehicle Satyapal was holding a licence for driving Light motor vehicle whereas the vehicle involved in the accident was a commercial vehicle. He further contends that the driver of the offending vehicle was not holding a valid license at the time of the accident. He further states that for the driver who drives a goods carriage commercial vehicle or passenger carriage light motor vehicle, there should be an endorsement of LTV on his driving license; otherwise Insurance company is not liable to indemnify the insured. He further placed reliance on the judgment of Hon''ble Supreme Court of India in case Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, and Oriental Insurance Company Vs. Lekh Ram and Others, . He further refers to Ex. R-1 driving licence, and Ex. R-2 registration certificate. He also refers to Ex. RW 1/3 Insurance Policy.

5. On the other hand, the learned counsel for the respondent states that the Tribunal has awarded sufficient and adequate compensation and has rightly held liable the appellant-Insurance company to pay the compensation.

6. The counsel for the respondent relies upon National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, and National Insurance Co. v. Tulna Devi & others, 2009 ACJ 581.

7. I have heard learned counsel for the parties and perused the case file.

8. The only issue to be decided in this FAO is as to whether the driver was possessing a valid and effective driving licence, on the date of the accident, authorising him to drive the offending vehicle.

9. From the perusal of Ex. R-1, the driving licence, it is borne out that the driver of the offending vehicle Satyapal, was holding a licence to drive Light motor vehicles, whereas, on the date of accident he was driving a commercial vehicle, for which, he had no authorisation to drive. Thus, there is a violation of terms and conditions of insurance policy Ex. RW 1/3. Moreover, the vehicle insured with the Insurance company was a goods carrying three wheeler whereas, on the date of accident the driver of the offending vehicle was driving a commercial vehicle. As per the provisions of the Motor Vehicles Act, 1988, Section 3(10) no person can drive a commercial vehicle in a public place without specific endorsement on the driving licence for driving a commercial vehicle.

10. In Angad Kol and others'' case (supra), the Hon''ble Supreme Court has held as under:-

8. Motor Vehicles Act, 1988 (hereinafter called as the Act) was enacted to consolidate and amend the law relating to motor vehicles. Driving licence has

been defined in Section 2(10) to mean the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. "Goods carriage" has been defined in Section 2(14) to mean any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. The said Act also defines heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle as well as a light motor vehicle in Section 2(21) of the Act to mean:

light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

9. Although the definition of the light motor vehicle brings within its umbrage both transport vehicle or omnibus, indisputably, as would be noticed infra, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists. Section 3 provides for the necessity of driving licence, stating:

3. Necessity for driving licence. (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor car or motercycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do. (2)

Section 9 provides for grant of driving licence. Section 10 prescribes the form and contents of licences to drive which is to the following effect:

10. Form and contents of licences to drive. (1) Every learner''s licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) to (c)

(d) light motor vehicle;

(e) transport vehicle;

(i) road Roller;

(j) motor vehicle of a specified description.

10. The distinction between a light motor vehicle and a transport vehicle is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The

distinction between a transport vehicle and a passenger vehicle can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a transport vehicle whereas in case of any other licence, it may remain effective for a period of 20 years.

11. In the present case, the licence held by the driver of the offending vehicle was for driving LMV. Therefore, in view of Angad Kol and ors., case (supra), the licence held by the driver was not valid and effective for driving the light transport vehicle. If a person possesses a valid licence for driving Light motor vehicles, it cannot be taken to be one for Light Transport vehicle. Special endorsement is required on the licence to driver the light transport vehicle as well, which is missing in this case. From the record, it is evident that the driver did not possess valid and effective driving license. Breach of conditions of the Insurance Policy is apparent. Therefore, the finding recorded by the learned Tribunal, being erroneous is hereby reversed, so far as the liability of Insurance Company is concerned.

12. Accordingly, this Court comes to the conclusion that on 23.7.2008 i.e. the date of accident, Satyapal-driver was not possessing a valid and effective driving licence authorising him to drive the offending vehicle. In view of the above, the appeal of the Insurance company deserves to succeed and claim petition qua it is required to be dismissed. Therefore, in view the above the present appeal is allowed. Claim petition qua Insurance Company is dismissed. The impugned award dated 4.2.2010, is set aside qua respondent No. 3-appellant, Insurance company.