
(2007) 10 UK CK 0002
In the Uttarakhand High Court

Balbir Singh

APPELLANT

Vs

Smt. Shobha Kashyap and Another

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Employees Compensation Act, 1923 — Section 10
Motor Vehicles Act, 1988 — Section 149

Citation : (2009) ACJ 546 : (2008) 1 AWC 96 : (2007) 4 UC 43 : (2008) 1 UD 65

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri N. S. Pundir counsel for the appellant and Sri M. K. Goel counsel for the respondent No. 2.

2. Present appeal has been filed against the judgment and award dated 26.10.2005, passed by the Workmen Compensation Commissioner, Tehri Garhwal dismissing the application of the claimant for grant of compensation.

3. The claimant-appellant has filed a claim petition before the Workmen Compensation Commissioner, for grant of compensation on account of injuries sustained by him in an accident.

4. Briefly stated the claimant was working as driver in Tata Summo No. H.R. 38E 3031, which was owned by respondent No. 1 Smt. Shobha Kashyap and was insured with respondent No. 2 the Oriental Insurance Company. He sustained grievous injury due to which his leg and one hand have become incapable to work and he has become permanently disabled. His employer did not pay any compensation for his injuries in the accident. He has got medical treatment and he has become 60% disabled.

5. The opposite party No. 1 has admitted that the claimant was driver and was getting Rs. 2,200 per month as salary. The vehicle was insured with the Oriental Insurance Company therefore, the insurance company is liable to pay

compensation, if any.

6. Opposite party No. 2, Oriental Insurance Company has submitted that no notice u/s 10 of the Workmen's Compensation Act has been served on the insurance company. The driver and the owner of the vehicle has flouted the terms and conditions of the insurance policy and as such insurance company is not liable to pay compensation.

7. On the basis of pleadings of the parties the Tribunal has framed the following issues:

1. Whether the claimant was employed as driver on the date of accident?
2. What was the age and salary of the claimant at the time of accident?
3. Whether all the papers of the vehicle was valid and the claimant had a valid driving licence at the time of accident?
4. Whether as result of accident, the claimant has become handicapped/ injured and unable to do work? If so the percentage of disability and its effect?
5. Whether the claimant is entitled to get compensation from the opposite parties and from which of the opposite parties?

8. The claimant has examined himself as P.W. 1, Sri Vijai Kumar as P.W. 2 and Dr. D. L. Shah as P.W. 3 he also filed copy of the notice, copy of the G. D. report, Medical report, discharge certificate of Apollo Hospital, insurance cover note, registration certificate, fitness certificate and permit of the vehicle in question. The opposite parties have not adduced any evidence either oral or documentary.

9. The Tribunal has held that the claimant was employed as driver and was getting Rs. 2,500 per month as salary. The vehicle has valid registration, fitness certificate and permit. The driver has valid driving licence issued by Licensing Authority of Agra. However, there was no endorsement regarding driving in hills. The Claims Tribunal has held that as there was no hill endorsement on the driving licence of the claimant, therefore, he was not authorised to drive the vehicle on hill-roads and as such he is not entitled to get any compensation on account of sustaining injuries in the accident.

10. The Claims Tribunal has also held that the claimant has suffered 60% disability in the accident but as there was no hill endorsement on the driving licence his claim petition was rejected vide impugned judgment and award.

11. Rule 193 of the M.V. Rules, 1998, reads as under:

193. Endorsement of certain licences for hill roads.-No person shall drive a public service vehicle or a goods vehicle on a hill road unless his licence to drive such public service vehicle or goods vehicle has been endorsed by a registering authority with a permission to drive upon hill roads situated within the jurisdiction of such registering authority or in the case of a public service vehicle hired by tourists, by the registering authority of the State with which reciprocal

arrangements on the point have been agreed upon.

Counsel for appellant has submitted that aforesaid endorsement is only applicable for public service vehicles and further their being no such provision under the M.V. Act, therefore. Rule 193 cannot be held to be applicable.

12. I have considered the submissions in the light of the above rules and I find that if there was no endorsement of authorisation to drive the vehicles in hills, the licence cannot be held invalid.

13. The Apex Court in the case of *United India Insurance Co. Ltd. v. Lehu and Ors.* AIR 2003 SCW 1695 : 2003 (2) AWC 1601 (SC), has held that where the driver's licence found fake, liability of insurance company towards third party does not get avoided. The Apex Court has observed as under:

20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with R.T.Os., which are spread all over the country, whether the driving licence shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia*, *Sohan Lal Passi* and *Kamla* cases. We are in full agreement with the views expressed therein and see no reason to take different view.

14. In the case of *National Insurance Co. Ltd. v. Swaran Singh* AIR 2004 SCW 663 : 2004 (2) AWC 1589 (SC), the Apex Court has held as under:

(iii) The breach of policy condition, e.g., disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2) (a) (ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

* * * (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 the 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 insurer u/s 149(2) of the Act.

15. The Apex Court in the case of Lal Chand v. Oriental Insurance Company Ltd. AIR 2006 SCW 4832 : 2006 (4) AWC 3578 (SC), after placing reliance upon the case law enumerated in the case of United India Insurance Company Ltd. Vs. Lehru and Others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, , has held as under:

In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the insurance company would not then be absolved of its liability.

16. The owner of the vehicle has mentioned in his written statement that the driver of the vehicle was an expert driver having valid driving licence. The claimant filed the copy of licence alongwith his application for compensation. Hence, in view of the observations made above, there would be no breach of Section 149(2)(a)(ii) on account of the non-endorsement of hill driving licence and the insurance company cannot be absolved from his liability.

17. Similar view has been taken by a Division Bench of this Court in A.O. No. 139 of 2005, New India Assurance Co. v. Smt. Kala Devi and Ors. decided on 31.10.2006.

18. Thus, I hold that the claimant is entitled to get compensation payable by the Oriental Insurance Company.

19. So far as the amount of compensation is concerned on the date of accident the age of the claimant was held to be 26 years and he was getting Rs. 2,500 as salary. The claimant has suffered 60% permanent disability and as such he is entitled to get sixty per cent of his monthly wages multiplied by the relevant factor divided by 60%, i.e., $1,500 \times 215.26 \times 60/100 = \text{Rs. } 1,93,734$.

Thus, the claimant is entitled to get Rs. 1,93,734 as compensation alongwith interest on that amount at the rate of 12% per annum from the date of accident, i.e., 6.5.2002 till today which is quantified to Rs. 1,27,864. As the vehicle was insured with the Oriental Insurance Company respondent No. 2 on the date of

accident, the insurance company is liable to pay compensation. Thus, respondent No. 2 the Oriental Insurance Company is directed to pay Rs. 3,21,598 to the claimant within one month.

20. Accordingly, the appeal is allowed with costs.