(2016) 09 SHI CK 0086

In the High Court Of Himachal Pradesh

Case No : FAO No. 242 of 2010.

Barfi Devi - Appellant @HASH Lal Singh and Others

Date of Decision : 02-09-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, Section 2(21), Section 3, Section 4

Citation : (2016) AAC 2271

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Dinesh Thakur, Advocate, for the Appellant; Mr. Lovneesh Kanwar, Advocate, for the Respondents No. 1 and 2; Mr. Praveen Kumar, Advocate, for the Respondents No. 3; Mr. Jagdish Thakur, Advocate, for the Respondents No. 4

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, CJ.(Oral) - This appeal is directed against the award, dated 25th March, 2010, passed by the Motor Accident Claims Tribunal(I), Mandi (for short, "the Tribunal") in Claim Petition No.59 of 2008, titled as Lal Singh & another v. Barfi Devi & others, whereby a sum of Rs. 6,27,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till its realisation came to be awarded as compensation in favour of the claimants and the insurer was saddled with the liability, with a right of recovery (for short the "impugned award").

2. The claimants, insurer and driver of the offending vehicle have not questioned the impugned award on any count. Thus, the same has attained finality so far it relates to them.

3. The appellant-owner-insured has questioned the impugned award on the ground that the Tribunal has fallen in an error in granting right of recovery to the insurer. Thus, the only dispute involves in this appeal is vis-a-vis issue No.3.

4. Admittedly, the driver was driving the offending vehicle, i.e. Mahindra Pick Up, bearing registration No.HP- 28-2612, at the relevant point of time, the unladen

weight of which is 1610 kilograms, as per the Certificate of Registration, Ext.RW-4/B, which falls within the definition of ''light motor vehicle'' in terms of Section 2(21) of the Motor Vehicles Act, 1988, for short ''the MV Act''.

5. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & ors., being LPA No.180 of 2002, decided on 27th September, 2007, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above mentioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. v. Irfan Sidiq Bhat, 2004 (2) SLJ 623, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorisation of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:-

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorisation in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

?.......................

17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

6. The mandate of Sections 2 and 3 of the MV Act came up for consideration

before the Apex Court in a case titled as Chairman, Rajasthan State Road Transport Corporation & ors. v. Smt. Santosh & Ors., reported in 2013 AIR SCW 2791, and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

"19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines ''tractor'' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines `trailer'' which means any vehicle, other than a semi- trailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. ?....................

21. ?....................

22. ?....................

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. 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'', ''maxicab'', ''medium goods vehicle'', ''medium passenger motor vehicle'', ''motor-cab'', ''motorcycle'', ''omnibus'', ''private service vehicle'', ''semi- trailer'', ''tourist vehicle'', ''tractor'', ''trailer'' and ''transport vehicle''."

7. The Apex Court in another case titled as National Insurance Company Ltd. v. Annappa Irappa Nesaria & Ors., reported in 2008 AIR SCW 906, has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of ''light motor vehicle'', ''medium goods vehicle'' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of

the judgment herein:

"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the ''light motor vehicle'' as contained in Section 2(21) of the Motor vehicles Act, 1988 (''Act'' for short), a light goods carriage would come within the purview thereof.

A ''light goods carriage'' having not been defined in the Act, the definition of the ''light motor vehicle'' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

Strong reliance has been placed in this behalf by the learned counsel in Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd., [1999 (6) SCC 620].

9. ?..................

10. ?..............

11. ?..............

12. ?.............

13. ?.............

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles. Clause (e) provides for ''Transport vehicle'' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15. ?.........................

16. From what has been noticed hereinbefore, it is evident that ''transport vehicle'' has now been substituted for ''medium goods vehicle'' and ''heavy goods vehicle''. The light motor vehicle continued, at the relevant point of time, to cover both, ''light passenger carriage vehicle'' and ''light goods carriage vehicle''.

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

8. The Apex Court in the latest judgment in the case titled as Kulwant Singh & Ors. v. Oriental Insurance Company Ltd., reported in JT 2014 (12) SC 110, held that PSV endorsement is not required.

9. The same principle has been laid down by this Court in a series of cases.

10. Having glance of the above discussions, I hold that the endorsement was not required.

11. Learned counsel for the insurer argued that the driver of the offending vehicle was not competent to drive the vehicle in terms of the mandate of Section 4 of the MV Act because he had not crossed the age of twenty years at the time of issuance of the driving licence.

12. The copy of the driving licence is on the record as Mark-A, the perusal of which does disclose that the driver was competent to drive not only the light motor vehicle, but was also competent to drive the tractor, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicles. The competent authority, after noticing his expertise, has granted him the driving licence to drive the heavy motor vehicles, not to speak of light motor vehicle.

13. A person, who is eighteen years of age, is major and is eligible to have a driving licence and the competent authority issues the driving licence, if he qualifies the tests required as per the mandate of the MV Act and the Rules. Even otherwise, the insurer has not led any evidence to prove that the driver was not twenty years of age at the time of the issuance of the driving licence and that was the cause of the accident. Having said so, it is held that the driver was competent to drive the offending vehicle.

14. Further, the insurer has failed to plead and prove that it was within the knowledge of the owner-insured that the driver was not having the requisite age to have the driving licence to drive the offending vehicle. What the owner was supposed to examine at the time of engagement of the driver was whether the driver was having a valid driving licence. The driving licence, Mark-A, has been issued by the competent authority. Once the driving licence has been issued by the competent authority, it is valid, cannot be said to be void and holds the field till it is revoked by the competent authority. It was not the duty of the owner-insured to verify as to whether the driver was eligible for having that category of driving licence before the age of twenty years. He was supposed only to ascertain whether the driver was having a driving licence, which he has done. Thus, by no stretch of imagination it can be said that the owner-insured of the offending vehicle has committed any wilful breach.

15. Viewed thus, the findings returned by the Tribunal on issue No.3 are set aside and it is held that the insurer has to satisfy the impugned award.

16. Having glance of the above discussions, the impugned award is modified, as indicated herein above, and the appeal is allowed.

17. The Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payees'' account cheque or by depositing the same in their respective bank accounts.

18. Send down the record after placing copy of the judgment on the Tribunal''s file.

