
(2000) 04 RAJ CK 0083
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1771 of 1999

Bhanwar Lal

APPELLANT

Vs

Gorkha Ram and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 2, 3

Citation : (2000) 3 RLW 1874 : (2000) 4 WLC 241 : (2000) 3 WLN 417

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This petition has been filed against the impugned Award dated 3.1.1998 passed by the Motor Accident Claims Tribunal, Barmer in M.A.C.T. Claim No. 60/1997 fastening the "no fault liability" of Rs. 50,000/- to the driver and owner of the vehicle and exonerating respondent No. 3 the insurance company from the said liability.

2. The facts and circumstances giving rise to this case are that petitioner owned the truck having registration No. RRG 2712 and the same had been insured with respondent No. 3, the United Indian Insurance Company Ltd., One Narain Ram, who is defendant No. 1 in the claim petition and has not been impleaded in this petition, was possessing a learning driving licence valid from 24.2.1997 to 23.8.1997 and when he was driving the said vehicle on 13.3.1997 it met with an accident which resulted in the death of a twelve years old boy Ghamanda Ram the son of claimants No. 1 and 2. The claimants filed the Claim Case No. 60/1997 before the learned Tribunal claiming compensation. However, the dispute arose regarding the interim award u/s 140 of the Motor Vehicles Act, 1988 (for short, "the Act") for "no fault liability." Therein, respondent No. 3, the insurance company, took a plea that it was not liable to pay the same as the vehicle, at the relevant time, had been driven by an unauthorised and the driver was holding merely a learner's driving licence and he was not duly effective licence-holden

The learned Tribunal placing reliance upon the judgment of the Hon'ble Supreme Court in *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, , allowed the condition of the insurance company and exonerated it from the liability of interim award. Hence this petition.

3. Section 140 of the Act provides for liability without fault in certain cases. As per the said provision, in case of death or permanent disability of any person as a result of the accident, the owner of the vehicle shall be liable to make payment of the entire award on the principle of "no fault liability" and for such claim, it is not required for the claimant to plead and establish the death or permanent disability, in respect of which the claim had been made, was due to any wrongful act, neglect or default of the owner of the vehicle.

4. The provision of Section 2(x) of the Act, which defines "Driving Licence" reads as under-

"Driving Licence" means the licence issued by the Competent Authority under Chapter II, authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.

5. Rule 141 of the Central Motor Vehicles Rules, 1989 (for short, "the Rules, 1989") mandatorily requires and authorises the insurer to issue every holder of policy of insurance, a certificate of insurance in Form 51 in respect of each such vehicle. Clause (9) of said Form 51 reads as under-

Persons or class of persons entitled to drive stage carriage/contract carriage/private service vehicle:

Goods Carriage:

Any, person, including insured:

provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:

Provided also that the person holding an effective learner's licence may also drive the vehicle when not used for transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

6. Rule 3 of the Rules, 1989 provides, in general, for non-application of the provisions of Section 3 of the Act for a person receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive. Section 3 of the Act completely prohibits any person to drive a vehicle on any public place unless he holds an effective driving licence. In fact, it is a general clarification as Sub-section (2) of Section 3 of the Act also provides for a similar provision stating that condition, subject to which Sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle, shall be such as may be prescribed by the Central Government.

7. Mr. Punia, learned Counsel for the petitioner has valiantly tried to develop a case on the basis of Form 51, as explained above, but the submission made by him is preposterous for the reason that petitioner failed to lay down any factual foundation that the person, who was driving the vehicle and met the accident, had anything to do with the requirement of Section 3 of the Act or Rule 141 of the Rules, 1989, nor there is anything on record even before this Court, nor is there any averments in the petition that at the relevant time, the vehicle was not carrying the goods. Thus, in absence of the averments and pleadings to this effect, such an argument is not tenable.

8. The Hon"ble Supreme Court has dealt with the issue in detail in *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, and categorically held that in case the driver was not holding the effective driving license, the insurer cannot be fastened with the liability and a driver holding learner"s licence cannot be regarded as a person having effective driving licence and in case the insurance policy makes it clear that in the event of an accident the insurer will be liable provided the vehicle was driven by a person holding valid driving licence or a permanent driving licence other than a learner licence, it cannot be fastened with any liability to indemnify the owner.

9. In *Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others*, the Hon"ble Supreme Court had held that when the insured himself entrusted the vehicle to a person who did not hold an effective licence, the insured could be said to have committed the breach of condition of policy and in case he is found guilty of committing such a breach, the insurer can escape from the obligation to indemnify the insured.

10. In a similar circumstances, the Hon"ble Supreme Court considered its earlier judgment in *Mahadev Madar Tambe (supra) in United India Insurance Co. v. Gyan Cland and Ors.* (1998) 7 S.C.C. 558, wherein the Apex Court held as under-
Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the insurance company would get exonerated from its liability to meet the claim of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver.

11. While deciding the said case, the Hon"ble Supreme Court distinguished the facts from the case in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others*, wherein the vehicle had been entrusted by the insured to a person having effective driving licence. However, in transit, the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the ignition key at the ignition lock. The cleaner meddled with the vehicle and caused the accident. The question arose; whether the insured (owner) had committed the breach of the conditions incorporated in the Certificate of Insurance since the cleaner operated the vehicle of the fatal occasion without having driving licence. The Hon"ble Supreme Court expressed the view that it was only when the insured himself entrusted the vehicle to a person who did not hold a valid

licence, he could be said to have committed the breach of condition of the policy and in case the vehicle has been entrusted by somebody else, the insurance company cannot escape from the obligation to indemnify the insured for the reason that when insured had done every thing within his power, in as much as he had engaged the licenced driver and had placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured was guilty of any breach.

12. On the similar line, the earlier judgment of the Hon"ble Supreme Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, has been distinguished by the Supreme Court in Gyan Chand (supra).

13. Thus, there are two clear and distinct lines of cases decided by the Hon"ble Supreme Court in the vehicular accidental liability. The first line of cases consist of the facts and circumstances where the insured are alleged to have committed breach of conditions of the insurance policy by entrusting the vehicle to the person not having the effective licence. Such a breach has been considered to be a valid defence for the insurance company to get exonerated from any third party liability who suffered on account of vehicular accident etc. The other line of cases deal with the insured-owner of offending motor vehicle that caused such accident, wherein the insured owners of the vehicle did not themselves committed breach of any such condition and handed over the vehicles for driving to persons having effective driving licence, who, on their own and without permission of the insured express or implied, handed over the vehicles or acted in such a way that the vehicle got available to unlicensed person for being driven by the latter and which got involved in the accident while being driven by such unauthorised persons. In such cases, the insurance company could not get the benefit of exclusionary clause and is liable to indemnify the third party for accidental injuries.

14. The judgment in National Insurance Co. Ltd. Vs. Santro Devi and Others, , relied upon by Mr. Punia, is of no help to the petitioner, for the reasons that the facts are quite distinguishable as the issue involved therein had been whether a forged or fake licence, if renewed, would get validated or not so as to work out the liabilities under the At, 1988. As the instant case falls within the first category, the insurer is entitled for the benefit arising out of breach of the condition of the insurance policy by the insured and cannot be fastened with any liability to indemnify him or to pay compensation to the insured.

15. In view of the above, no fault can be found with the order of the learned Tribunal. The petition is devoid of any merit and accordingly dismissed. There shall be no order as to costs.