
(2008) 08 SHI CK 0040
In the High Court Of Himachal Pradesh

Bhoop Singh

APPELLANT

Vs

Puran Chand and Others, Bhagirathi and Others and Durga
Devi and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Citation : (2009) ACJ 1031 : (2008) 2 ShimLC 525

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Judgement

Kuldip Singh, J.—This judgment shall dispose of RFA No. 236 of 2001, RFA No. 237 of 2001 and RFA No. 238 of 2001 arising out of MAC Case No. 3 of 1998, MAC Case No. 26 of 1998 and MAC Case No. 25 of 1998 respectively with common accident dated 28.5.1998 involving truck No. HP-35-0845 and decided by separate awards all dated 8.3.2001 by learned Motor Accident Claims Tribunal, Kinnaur at Rampur Buehshar. The common question of law is involved in all the three appeals, therefore, all appeals are being disposed of by common judgment.

FAO No. 236 of 2001:

2.On 28.5.1998 Chander Shekhar aged about 17 years was on board in truck bearing registration No. HP-35-0845 as conductor and was going from Kalka to Parwanoo. The truck at the relevant time was owned by > appellant and respondent No. 7 was driving the truck. The truck went out of the road at some distance from Oddi and had fallen in a nearby nullah causing death of Chander Shekhar and other two occupants. Chander Shekhar was the son of respondents No. 1 and 2. The respondents No. 1 to 6 filed the claim petition alleging therein that accident took place due to rash and negligent driving on the part of respondent No. 7 who was driving the truck at the time of accident. The deceased Chander Shekhar was earning Rs. 3,500 per month. The respondent No. 2 is the mother and respondents No. 3 to 6 are the brothers and sisters of deceased Chander Shekhar. The truck was insured with respondent No. 8. The

respondents No. 1 to 6 claimed Rs. 3,80,000 compensation on account of death of Chander Shekhar.

3. Appellant contested the petition. It has been denied that accident took place due to rash and negligent driving on the part of respondent No. 7. It has been admitted that Chander Shekhar was employed as Conductor on the truck on Rs. 1,000 per month wages. The accident was not denied but it has been pleaded that accident took place due to mechanical fault. It has been pleaded that respondent No. 7 was a duly licenced driver who was employed by the appellant for driving the truck. The truck was insured at the time of accident with respondent No. 8 and liability, if any, is of respondent No. 8 to pay the compensation.

4. The respondent No. 8 insurer has contested the petition and admitted that the truck was insured at the time of accident. It has been submitted that the appellant and respondent No. 7 had contravened the terms and conditions of insurance policy. The respondent No. 7 was not having valid and effective driving licence to drive the truck at the time of accident. Chander Shekhar deceased was a gratuitous passenger in the truck, therefore, the insurance company denied its liability to pay any compensation. The learned Tribunal held that respondent No. 7 driver was not holding valid and effective driving licence and awarded Rs. 1,20,000 compensation with 12% interest payable w.e.f. 23.12.1998 till realization. The respondent No. 2 mother was held entitled to Rs. 60,000 compensation and balance amount of Rs. 60,000 was ordered to be paid in equal share to respondents No. 3 to 6 brothers and sisters of the deceased. The appellant and respondent No. 7 were held liable to pay the compensation and respondent No. 8 was exonerated from the liability.

FAO No. 237 of 2001:

5. On 28.5.1998 Bhagwan Dass aged about 53 years was travelling in truck bearing registration No. HP-35-0845 from Kalka to his house in village Katahar, Sub Tehsil Anni, District Kullu. The truck met with an accident near Oddi. Bhagwan Dass and other occupants of the truck suffered injuries. Bhagwan Dass was removed to IGMC Shimla for medical aid but he died on 2.6.1998. The truck at the relevant time was owned by appellant and was being driven by respondent No. 2. The respondent No. 1 widow of deceased Bhagwan Dass filed the claim petition on the ground that at the time of accident, the truck was being driven rashly and negligently by respondent No. 2. The deceased Bhagwan Dass was earning Rs. 4,500 per month from agriculture, horticulture and business. The truck was insured with respondent No. 3. In the claim petition, the respondent No. 1 claimed Rs. 6,50,000 compensation on account of death of her husband and Rs. 6,116 on account of loss of goods.

6. The petition was contested by owner, driver and Insurance Company and they took more or less the same defence as was taken by them in MAC Case No. 3 of 1998. The learned Tribunal awarded Rs. 60,000 compensation to respondent No.

1 along with 12% interest payable w.e.f. 26.8.1998 onwards. The appellant and respondent No. 2 were made liable to pay the compensation. The petition against insurer was dismissed.

FAO No. 238 of 2001:

7. On 28.5.1998 Khem Dass aged about 50 years was traveling in truck bearing registration No. HP-35-0845 from Kalka to his house in village Katahar, Sub Tehsil Anni, District Kullu. The truck met with an accident near Oddi. Khem Dass and other occupants of the truck suffered injuries and Khem Dass succumbed to his injuries on 28.5.1998. The truck at the relevant time was owned by appellant and was being driven by respondent No. 2. The respondent No. 1 widow of deceased Khem Dass filed the claim petition on the ground that at the time of accident, the truck was being driven rashly and negligently by respondent No. 2. The deceased Khem Dass was earning Rs. 4,500 per month from agriculture, horticulture and business. The truck was insured with respondent No. 3. In the claim petition, the respondent No. 1 claimed Rs. 7,00,000 compensation on account of death of her husband and Rs. 6,116 on account of loss of goods.

8. The petition was contested by owner, driver and Insurance Company and they took more or less the same defence as was taken by them in MAC Case No. 3 of 1998. The learned Tribunal awarded Rs. 86,400 compensation to respondent No. 1 along with 12% interest payable w.e.f. 26.8.1998 onwards. The appellant and respondent No. 2 were made liable to pay the compensation. The petition against insurer was dismissed.

9. I have heard learned Counsel for the parties and gone through the record. The learned Counsel for the appellant has submitted that the truck was insured with the insurer at the time of accident. Insurer has failed to prove that at the time of accident driver was not having valid and effective driving licence or the driving licence of the driver was fake. The owner had engaged the driver for driving the truck bona fide and even if driver was holding fake licence still the insurer cannot escape the liability. The claim petitions were filed by third parties, therefore, in any case, insurer is liable to indemnify the owner and liable to pay the compensation. The learned Counsel for the Insurance Company has submitted that owner has filed the appeal and owner cannot shift the liability on the insurance company when it has been proved on record that the driver was not holding valid and effective driving licence at the time of accident, rather the licence of the driver was fake and for fake licence the owner of the vehicle cannot be placed at the same pedestal as third party for fixing liability on insurer. In brief, the learned Counsel for the insurer has submitted that owner cannot take benefit of fake driving licence of the driver to make liable Insurance Company of the vehicle involved in the accident.

10. The question involved in all the three appeals is limited to the extent whether Insurance Company is liable to indemnify appellant owner and pay the award amount in each appeal to the claimants. The connected question is with regard

to the validity of driving licence of the driver who was driving the truck at the time of accident. The learned Counsel for appellant in each appeal has submitted nothing on the quantum of compensation. In order to appreciate the controversy, the evidence is being referred from the file of FAO No. 236 of 2001. Ext.RB (Ext.RW-1/C) is the copy of driving licence of the driver, who was driving the truck No. KP-35-0845 when it met with an accident on 28.5.1998, which was issued by the Licensing Authority, Bulandshehar, U.P. The Insurance Policy Ext.RW-1/B of the truck was for the period 26.8.1997 to 25.8.1998. The accident took place during the currency of the Insurance Policy.

11. RW-3 Bhoop Singh has stated that he is owner of Truck No. HP-35-0845. He employed the driver after examining the driving licence. In cross-examination, he has stated that he tried to find out the genuine character of the licence from the office of Registration and Licensing Authority, Bulandshehar but the concerned Clerk was on leave. RW-2 Mohammad Izhar, Junior Clerk, office of Registration and Licensing Authority, Bulandshehar has stated that he had brought the summoned record. He had been working as Junior Clerk of Registration and Licensing Authority, Motor Vehicles, Bulandshehar since August, 2000. The driving licence Ext.RB (Ext.RW-1/C) is of Ram Pal, son of Krishan Chand. This driving licence is stated to have been issued on 18.3.1996 vide No.T-1598/96 but as per the books of Registration and Licensing Authority, no licence in favour of Ram Pal, son of Krishan Chand, village Hirapur, District Bulandshehar was issued. The licence T-1598 in 1996 was issued on 9.10.1996 in favour of one Lalit Kumar, son of Shiv Raj Singh, Mohan Puri, Bypass Road, Bulandshehar. On 18.3.1996 no licence was issued in the name of Ram Pal by Registration and Licensing Authority, Bulandshehar. It is, thus, clear that licence Ext.RB (Ext.RW-1/C) was not issued by the Registration and Licensing Authority, Bulandshehar and, therefore, the licence Ext.RB is not a genuine licence and the driver of truck No. HP-35-0845 at the time of accident on 28.5.1998 was not holding valid and effective licence.. The owner of the truck has, however, stated that he genuinely employed driver after believing his driving licence which he had shown to him. He has also stated that he attempted to verify the genuineness of the driving licence but could not do so as on the relevant date the concerned person was not available. There is no reason to disbelieve the owner of the truck. It is common knowledge that in a case of accident involving a vehicle, the liability is fastened on the owner in case the driver is found negligent for causing the accident. There is no dearth of drivers having valid driving licences. It is not believable that in the present case the owner knowing fully well that the driver had not genuine licence, still employed the driver. The plea of the owner is believable that he engaged the driver bona fide after taking his driving licence to be genuine, it is different matter that driving licence of the driver later on found to be fake.

12. The learned Counsel for the appellant has submitted that in all the three appeals, the claim petitions were filed by the third parties. He has submitted that in view of National Insurance Co. Ltd. Vs. Swaran Singh and Others, and Lal

Chand Vs. Oriental Insurance Co. Ltd., the Insurance Company is liable to indemnify the owner and is liable to pay the compensation to the claimants even if the driving licence Ext. RB is found to be fake. On the contrary, learned Counsel for the Insurance Company has submitted that in view of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and United India Insurance Co. Ltd. Vs. Davinder Singh, , the Insurance Company is not liable to indemnify the owner in case of fake licence.

13. In Swaran Singh (supra), in Paragraph-110 summary of findings has been given as follows:

(i) xxx xxxx xxxx(ii) xxx xxx xxxx (iii) The breach of policy condition e.g. disqualification of the driver or invalid during 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.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof whereof would be on them.

(v) xxx xxx xxx (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.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

14. In Laxmi Narain (supra), the judgments for consideration before the Hon'ble Supreme Court were from High Court and National Disputes Consumer Redressal Commission. The contention of the respondents in that case was that there can be no difference of approach in cases where the disputes relate to the claim of the insurer and insured. According to them, a purposive interpretation of the

provisions is called for as the statute was a beneficial piece of legislation. In Para-9 of the judgment, it has been held that Swaran Singh's case indisputably related to a case u/s 149 of the Act and the Court held that in Swaran Singh case the cases concerned were mainly concerned with third party rights under the policy. It was held in that context that any condition in the policy whereby the right of the third party is taken away would be void. In Para-24 of judgment in Laxmi Narain's case, the Hon'ble Supreme Court has held that in the background of statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in respect of own damage claims. The Supreme Court has drawn distinction between third party claim and own damage claim while dealing with the case of fake licence. In Para-37 it has been held that the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the licence was a fake one. Once it is established the natural consequences have to flow. In Para-38, the Supreme Court has ultimately held that following situations emerge:

- (1) The decision in Swaran Singh case has no application to cases other than third-party risks.
- (2) Where originally the licence was a fake one, renewal cannot cure the inherent fatality.
- (3) In case of third-party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.
- (4) The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

15. In Davinder Singh (supra), the question was whether renewal of licence to drive a motor vehicle which was originally found to be forged would lead to any liability on the part of the Insurance Company. Davinder Singh's case came before the Supreme Court from National Consumer Disputes Redressal Commission. In that case the complainant was the owner of the vehicle. The District Consumer Disputes Redressal Forum allowed the petition and awarded a sum of Rs. 1,23,412 towards damages and Rs. 20,000 towards other heads along with interest at the rate of 9% per annum. The appeal filed was dismissed by the State Consumer Disputes Redressal Commissioner. The revision filed before the National Commission was also dismissed. On those facts, the Supreme Court has held that Court below committed an error in holding the appellant liable to indemnify the owner of the vehicle in regard to the losses sustained by him. However, in Para-16 of the judgment, the Supreme Court has also held that a right on the part of the Insurance Company not to pay the amount of insurance would depend upon the facts and circumstances of each case. It in certain situation may be bound to pay the claim made by the third party; if the same is filed before a forum created under the Motor Vehicles Act.

16. In *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , it has been held by the Supreme Court that it is difficult to apply the ratio of this (Swaran Singh) decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third-party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to Swaran Singh ratio. In a claim petition under the Act mainly there are three parties, namely, insured, insurer and the third party. It is now clear that where the owner comes forward for claiming compensation for own damage and it is proved on record that his driver was having fake licence then such owner is not entitled to any compensation from his insurer. But when the claimant is a third party then in view of Swaran Singh, Lal Chand etc. above, the insurer is liable to indemnify the owner even though the driver of the insured was having fake licence. But in a given situation as held in *Laxmi Narain (supra)* the insurer may recover the same from the insured. In *National Insurance Co. Ltd. Vs. Geeta Bhat and Others*, Ishwar Dutt Bhat was travelling in a three wheeler. It met with an accident having been hit by a truck which was insured. The respondents in that case were the legal representatives of Ishwar Dutt and filed the claim petition. The Supreme Court held that a distinction has to be borne in mind in regard to a claim made by the insured in respect of damage of his vehicle or filed by the owner or any passenger of the vehicle as contradistinguished from a claim made by a third party. Where a third party has raised a claim, Swaran Singh's case would apply, in a claim made by the owner of the vehicle or other passenger of the vehicle, it would not. It has further been held that only because licence was fake, the same having regard to the settled legal position, would not absolve the insurer to reimburse the owner of a vehicle in respect of the amount awarded in favour of a third party by the Tribunal in exercise of its jurisdiction u/s 166 of the Act. The Supreme Court has further held that interest of justice shall be subserved if the appellant is directed to pay the awarded amount in favour of the claimants with liberty to recover the same from owner and driver of the vehicle in an appropriate proceeding in accordance with law. Bhagwan Dass in FAO No. 237 of 2001 and Khem Dass in FAO No. 238 of 2001 were travelling in the ill fated truck as passengers along with their goods and, therefore, in view of Geeta Bhat (supra) they cannot be equated with third parties and in these circumstances, Swaran Singh (supra) is not applicable in FAO No. 237 of 2001 and FAO No. 238 of 2001, but in FAO No. 236 of 2001 Chander Shekhar was on board in the truck at the time of accident as Conductor and not as passenger, his position was different. The driver of the offending truck was not holding valid and effective driving licence at the time of accident. In these circumstances, insurer is not liable to indemnify the insured in FAO No. 237 of 2001 and FAO No. 238 of 2001, but in FAO No. 236 of 2001 insurer is liable to pay the impugned award amount with interest to the claimants with liberty to recover said amount from owner and driver of offending truck and to this extent award passed by learned Tribunal and award in FAO No. 236 of 2001 requires modification.

17. No other point was urged.

18. The result of the above discussion, FAO No. 236 of 2001 is allowed, award dated 8.3.2001 passed by learned Motor Accident Claims Tribunal, Kinnaur at Rampur Buehshar in MAC Case No. 3 of 1998 is modified to the extent that New India Assurance Company Ltd., insurer shall pay the award amount to the claimants along with interest as held by learned Tribunal with liberty to recover said amount from owner and driver of offending truck in accordance with law.

19. FAO No. 237 of 2001 and FAO No. 238 of 2001 are dismissed.

20. No costs.