(2014) 11 SHI CK 0096

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) Nos. 385 and 388 of 2007

Bhowmick Arti	APPELLANT
Vs	
Shiksha Rani Oriental Insurance Co. Ltd. Vs Bhowmick Arti	RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 10, 10(2)(d), 10(2)(e), 112, 133

Citation : (2015) 1 ShimLC 416

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Naveen K. Bhardwaj and Ashwani K. Sharma, Advocate for the Appellant; Naveen K. Bhardwaj, Rajiv Rai, Ashwani K. Sharma, and Onkar Jairath, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Challenge in this appeal is to the judgment and award dated 29.6.2007, made by the Motor Accident Claims Tribunal, Kullu in Cl. petition No. 61 of 2006, titled Smt. Bhowmick and another vs. Smt. Shiksha Rani and others, whereby a sum of Rs. 1,05,000/- came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The claimants had invoked the jurisdiction of the Tribunal for the grant of compensation to the tune of Rs. 10 lacs, as per break-ups given in the claim petition.

3. The respondents contested and resisted the claim petition by filing reply.

4. The Tribunal on the pleadings of the parties framed the following issues:

(i) Whether deceased Navneet has died in the accident of vehicle Tata 207 bearing regn. No. HP-66-0586, due to rash and negligent driving on the part of respondent No. 2, as alleged? OPP

(ii) If issue-1 is held in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP.

(iii) Whether respondent -2 was not holding valid and effective driving license and the vehicle involved in the accident was being plied without valid documents. If so, to what effect? OPR-3.

(iv) Relief.

5. The Tribunal, after examining the evidence on record awarded a sum of Rs. 1,05,000/- in favour of the claimants.

6. The insurer, by the medium of FAO No. 388 of 2007, has questioned impugned award only on the ground that driver of the vehicle was not having a valid and effective driving licence thus, the owner has committed willful breach. This argument has been rightly dealt with by the Tribunal in para 17 of the impugned award. It is apt to reproduce para 17 of the impugned judgment herein:

"17. The Ld. counsel for respondent No. 3 contended that since the driver was not having a valid driving licence to drive transport vehicle, the insurance company is not liable to pay the compensation. However, this contention of the Ld. counsel for respondent No. 3 deserves to be rejected as the perusal of the R.C. Ex. RW-1/A of the offending vehicle shows that its unladen weight was 1690 kgs. and gross vehicle weight was 2820 kgs. As per the definition clause in Section 2(2) of the Motor Vehicles Act, 1988, "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either or which or a motor car of tractor or road roller the unladen weight of any of which does not exceed 7500 kilograms:"

7. I have also delivered judgment in FAO No. 54 of 2012 titled Mahesh Kumar and another vs. Smt. Piaro Devi and others decided on 25th July, 2014. It is apt to reproduce paras 10 to 19 of the said judgment herein:

"10. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2(10), 2(21), 2(35) and 2(47), respectively, of the MV Act herein:

"2. ....

(10) "driving licence" means the licence issued by a 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.

xxx xxx xxx

(21) "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 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

11. Section 2(21) of the MV Act provides that a "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. Section 2(35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2(47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

12. At the cost of repetition, definition of "light motor vehicle" includes the words "transport vehicle" also. Thus, the definition, as given, mandates the "light motor vehicle" is itself a "transport vehicle", whereas the definitions of other vehicles are contained in Sections 2(14), 2(16), 2(17), 2(18), 2(22), 2(23), 2(24), 2(25), 2(26), 2(27), 2(28) and 2(29) of the MV Act. In these definitions, the words "transport vehicle" are neither used nor included and that is the reason, the definition of "transport vehicle" is given in Section 2(47) of the MV Act.

13. In this backdrop, we have to go through Section 3 and Section 10 of the MV Act. It is apt to reproduce Section 3 of the Act herein:

"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 authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab or motor cycle 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) The conditions 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."

14. It mandates that the driver should have the licence to drive a particular kind of vehicle and it must contain endorsement for driving a transport vehicle. In this section, the words "light motor vehicle" are not recorded. Meaning thereby, this section is to be read with the definition of other vehicles including the definition given in Section 2(47) of the MV Act except the definition given in Section 2(21) of the MV Act for the reason that Section 2(21) of the MV Act provides, as discussed hereinabove, that it includes transport vehicle also.

15. My this view is supported by Section 10 of the MV Act, which reads as under:

"10. Form and contents of licences to drive. - (1) Every learner''s licence and driving licence, except a driving licence issued under section 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 cases, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description."

16. Section 10(2)(d) of the MV Act contains "light motor vehicle" and Section 10(2)(e) of the MV Act, which was substituted in terms of amendment of 1994, class of the vehicles specified in clauses (e) to (h) before amendment stand deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-a-viz other vehicles, definitions of which are given and discussed hereinabove.

17. 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. versus 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 abovementioned 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. Vs. Irfan Sidiq Bhat and Mohd Aslam Khan, , 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 authorization 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 judgement 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 authorization 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."

18. The purpose of 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 and Others Vs. Smt. Santosh and Others, , 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'', ''maxi-cab'', ''medium goods vehicle'', ''medium passenger motor vehicle'', ''motor-cab'', ''motorcycle'', ''omnibus'', ''private service vehicle'', ''semi- trailer'', ''tourist vehicle'', ''tractor'', ''trailer'' and ''transport vehicle''."

19. The Apex Court in another case titled as National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, , 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 Vs. Oriental Insurance Co. Ltd., .

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. Having said so, the driver was having a valid and effective driving licence. The insurer has not pleaded and proved that the owner has committed any willful breach which it was supposed to prove in terms of Section 149 of the Motor Vehicles Act. My this view is fortified by the Apex Court judgment in the case of National Insurance Co. Ltd. versus Swaran Singh & others, reported in AIR 2004 Supreme Court 1531. It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

"105.....................

(i)........................

(ii).......................

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

(iv) The insurance companies are, 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 wherefore would be on them.

(v)........................

(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 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 insured under Section 149(2) of the Act."

9. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, hereinbelow:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

10. The claimants have also questioned the impugned award by the medium of FAO No. 385/2007, on the ground of adequacy of compensation. The deceased was 60 years old at the time of the accident. The Tribunal has rightly awarded the compensation in favour of the claimants. The amount of compensation is just and appropriate and cannot be said to be inadequate in any way.

11. Having said so, both the appeals are dismissed and the impugned award is upheld. The amount deposited in the Registry be released in favour of the claimants, after proper verification, through payee''s cheque account.

12. Accordingly, both the appeals stand disposed of alongwith pending

applications. Send down the record, forthwith.