

(1998) 03 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 208 of 1995

Dharma Ram and Another

APPELLANT

Vs

Pema Ramji and Others

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (1999) 1 ACC 540 : (2000) ACJ 593 : AIR 1999 Raj 86 : (1998) 3 RLW 1597 : (1999) 1 WLC 721 : (1998) 1 WLN 245

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : L.R. Chaudhary, R.K. Mehta, for United Insurance Co. Dharma Ram and Smt. Dami, for the Appellant; H.R. Panwar, for Vehicle Owner, for the Respondent

Judgement

Shiv Kumar Sharma, J.—Both these appeals arise from the common judgment, therefore were heard analogously and are being disposed of by a common judgment.

2. The claim petition submitted by the claimants Dharma Ram and Smt. Dami related to the accident occurred on November 18, 1992 when Truck RJ 04 G 0061 crushed Kumari Veena a girl of 11 years, who was student of six class. Dharma Ram and Smt. Dami are her parents sought compensation by filing claim petition. The claim petition was contested by the insurance company, who is appellant in Miscellaneous Appeal No. 487/1995 as well as the vehicle owner. The learned Tribunal awarded Rs. 42,250/- as compensation to the claimants. Dissatisfied with the size of the award, claimants preferred Misc. Appeal No. 208 of 1995, whereas the insurance company assailed the said award on the ground that the owner of the vehicle committed breach of the policy, hence the insurance company was not liable for compensation.

3. I have given my anxious consideration to the rival submissions of carefully scanned the material on record. The contention of Mr. R. K. Mehta, learned

counsel appearing for the insurance company is that the driver of the vehicle was not having valid licence at the time of the accident. The driving licence produced was of light transport vehicle whereas the vehicle involved in the accident was heavy transport vehicle. The driver Pemaram was having a non transport licence but was allowed to drive the heavy transport vehicle for that he was not authorised. As such the insurance company could not have been held responsible to pay the compensation. Shri Mehta learned counsel has drawn my attention towards Section 14 of the Motor Vehicles Act, which reads as under :

"14. Currency of licences to drive motor vehicles.-- (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,--

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years; and

(b) in the case of any other licence,--(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of forty years on the date of issue or as the case may be renewal thereof,--

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of forty years, whichever is earlier;

(ii) if the person referred to in Sub-clause (i) has attained the age of forty years on the date of issue of, as the case may be renewal thereof, be effective form period of five years from the date of such issue or renewal;

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

4. My attention was also drawn towards Sub-section (2) of Section 10 of the Act. In support of his contention the learned counsel placed reliance on M. Sammamma v. Syed Kaja Maunuddin 2 (1992) ACC 477 , Dharmalinga Mudaliar Vs. N. Mohamed Ebrahim and Another, Bahadur Singh and Others Vs. Gulab Singh and Others, United India Insurance Co. Ltd. Vs. K. Subramaniam and Others, United India Insurance Co. Ltd. Vs. Gian Chand and others, and New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others,

5. On the other hand, Mr. L. R. Chaudhary and Mr. H. R. Panwar, learned counsel appearing for the claimants, as well as owner of the vehicle, placed reliance on Sohan Lal Passi Vs. P. Sesh Reddy and others, National Insurance Co. Ltd. Vs. Abdul Majid and Others, Dobella Laxmi Narayana Vs. S. Ravi Kumar and Another, United India Insurance Co. Ltd. v. Tara Chand 1995 (1) RLR 364 and National Insurance Co. Ltd. Madras Vs. A. Babu and others, Learned counsel contended that the Insurance Company did not specifically deny in the written statement

that the vehicle was driven flouting the terms of the policy. No issue in this regard was framed before the learned Tribunal. Therefore the insurance company cannot be permitted to raise this argument in the appeal.

6. In order to appreciate the case law cited before me it is necessary to peruse the pleadings. There is no dispute that the vehicle in question was insured with the appellant insurance company. The vehicle owner in their written statement pleaded that the vehicle was insured with the insurance vide Cover Note No. JR/91 No. 528655 and the insurance was valid from 26-10-1992 to 19-10-1993. Insurance Company submitted written statement on July 15, 1993. In para No. 24 it was pleaded by the insurance company :

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7. A perusal of record of the learned Tribunal further reveals that no issue in respect of violation of the conditions of the insurance policy was framed. The insurance company examined Shri R. R. Mohnot as NAW 1, who deposed in the examination in chief that the driver was not having valid licence at the time of accident according to policy Ex. A/1. But in the cross examination he admitted that from perusal of Ex. 6, it is not clear as to by whom it was issued. Even date of issuance of Ex. 6 is not clear. He also admitted that he never questioned as to whether the Driver Pemaram was having licence for plying heavy vehicle. Admittedly, no evidence was led before the learned Tribunal that the vehicle in question was a medium vehicle or heavy vehicle. Even in the pleading the fact in this regard was not specifically pleaded. It was incumbent upon the insurance company to plead in the written statement that the insured wilfully flouted the policy. It is not sufficient to plead that the claimants or the vehicle owner should prove that the vehicle in question was driven strictly in accordance with the conditions of the insurance policy. In the case on hand as the insurance company did not plead this fact specifically in the pleading, therefore the learned Tribunal did not frame the issue in this regard I am of the considered view that unless an opportunity of cross-examination is given to the claimants or the vehicle owner in respect of document Ex. 6 (driving licence) it cannot be interpreted by this Court in the manner as argued by the learned counsel for the insurance company.

8. In *United India Insurance Co. Ltd. v. Tara Chand* (supra), this Court indicated thus :

"2. The learned counsel then submitted that there was no valid licence of the

driver who was driving the bus in question. It is not in dispute that the driver was having valid licence for medium vehicle. Whether the bus in question was a medium vehicle or heavy vehicle is a question of fact. No evidence was led before the learned Tribunal. It was never argued before the Tribunal in that sense. Therefore, this contention cannot be permitted to be raised in this appeal. Hence this is also rejected."

9. In *Bishan Devi v. Sirbaksh Singh* : AIR 1979 SC 1862 : 1979 ACJ 494 it was observed (at pages 1865 & 1866 (of AIR)) :

"Under Section 96(2)(b)(ii) the insurer can defend a claim for compensation on the ground that the vehicle was driven by a person who was not duly licensed. Apart from making the averment in his written statement the insurer did not take any steps to establish that the vehicle was driven by a person who was not properly licensed. It is the duty of the insurer to have substantiated this plea."

10. In *National Insurance Co. Ltd. v. Abdul Majid* (supra), it was held thus--

"There is no substance in any of these contentions. Clause (b) of Sub-section (2) of Section 96 of the Motor Vehicles Act, 1939, enumerated the conditions of policy whose breach exonerated the insurer from the payment of compensation. Its Sub-clause (ii) ran as under :

"A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification."

11. The relevant portion of the insurance policy paper No. C-28/2-3 runs as under:

"The company shall not be liable under this policy in respect of (iii) any accident, loss, damage and/or liability caused, sustained or incurred whilst the motor vehicle is being driven by any person other than a driver;."

12. It is not provided in this condition that the driver should be duly licensed. Abdul Majid NAW 4, has deposed that he was a driver and he was having a licence for driving light vehicles. He fulfilled the said condition specified in the insurance policy by being a driver. The insurance company could not escape liability on the ground that he was not holding licence for driving heavy vehicle as it is not so mentioned in the abovenoted condition of the policy."

13. Even from other angle, if I examine the facts of the case by treating the pleadings of the insurance company sufficient for the sake of argument, then in order to resolve the controversy it will be necessary to look definition of light motor vehicles and heavy motor vehicles, as according to Ex. 6 driver Pemaram was having a driving licence of light motor vehicle. Clause 21 of Section 2 defines "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 6,000 kilograms. Clause 16 of Section 2

defines "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road roller the unladen weight of either of which exceeds 12,000 kilograms.

14. In view of the above definitions, it is a question of fact whether the vehicle in question was light motor vehicle or heavy motor vehicle. Therefore it was necessary for the insurance company, if it wanted to derive the advantage from Ex. 6, to have adduced the evidence to prove this fact that vehicle in question was not a light motor vehicle. Other document Ex. 5 also ought to have been explained by the insurance company by adducing evidence as it is not clear from the record whether this document was admitted by the counsel for the vehicle owner or by the counsel for the insurance company. Therefore it is difficult to place reliance on these documents.

15. Now I examine the case law cited by Shri R. K. Mehta, learned counsel for the insurance company.

16. In *Dharmalinga Mudaliar v. N. Mohamed Ebrahim* AIR 1977 Mad 117 (supra), it was held that the insurance company of the Bus was not liable to pay compensation as the Bus driver was not duly licensed.

17. In *M. Sammamma v. Syed Kaja Maunuddin* (supra), the driver was not having a licence for driving the lorry. It was held that the insurance company was not liable to pay compensation.

18. In *United India Insurance Co. Ltd. v. K. Subramaniam* (supra), a three wheeler goods vehicle driven by a driver who was holding licence to drive a light motor vehicle. Driver's licence was endorsed after the date of accident authorising him to drive a transport vehicle as paid employee. It was held that the insurance company was not liable as the driver was holding the valid licence.

19. In *Bahadur Singh and Others Vs. Gulab Singh and Others*, it was held that if a driver holds a licence to drive only a light motor vehicle and he drives a medium motor vehicle, the vehicle will be deemed to have been driven by a driver who had no valid licence to drive and therefrom the insurer will not be liable.

20. In *United India Insurance Co. Ltd. Vs. Gian Chand and others*, which is a two Judge Bench of their Lordships of the Supreme Court, propounded thus (at page 3826 of AIR):

"As regards exoneration of Insurance Company on account of the insured vehicle being driven by an unlicensed driver there are two lines of cases. The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of insurance Policy; which required them not to permit the vehicle to be driven by an unlicensed driver. Such a breach is held to be a valid defence for the Insurance Company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accident which may injure them personally or which may deprive them of their bread winner on

account of such accidents caused by the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that cause such accidents wherein the insured owners of the vehicles do not themselves commit breach of any such condition and hand over the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, hand over vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the insurance company cannot get benefit of the exclusionary clause and will remain liable to meet the claims of third parties for accidental injuries, whether fatal or otherwise. When, as in the instant case, no case was put up by the insured that he did not know that the driver to whom the vehicle was being handed over was not having a valid licence nor he stepped in the witness box to prove his case exposing him to an adverse inference being drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver and a finding is reached that 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 claims of third party who might have suffered on account of vehicular accident caused by such unlicensed driver."

21. In *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, two Judge Bench of the Hon"ble Supreme court held thus (at page 1153 (of AIR))--

"A person would be regarded as being duly licensed only if he has obtained a licence under Chapter II of the Motor Vehicles Act and a person who has obtained a temporary licence which enables him to learn driving cannot be regarded as having been duly licenced."

22. But the observations of their Lordships of the Supreme Court in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, was of three Judge Bench. In para 12 of the judgment it was propounded thus (at page 2633 (of AIR))--

"As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful....." While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act.

23. In the case on hand, the insurance company has failed to establish that the vehicle owner had wilfully violated the condition of the policy. It was not pleaded in the written statement by the insurance company that the driver of the vehicle

was not having a valid licence. It is not sufficient to plead that claimants or vehicle owner should prove that the vehicle was driven by the driver who was having a valid licence. The burden of proof is on the insurance company to prove that there was breach of the conditions of insurance policy. Therefore the authorities cited by the learned counsel for the insurance company are distinguishable. Relying on the ratio of Hon''ble Three Judge Bench of the Apex Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, I am unable to persuade myself to agree with the submissions made by Shri R. K. Mehta, learned counsel appearing for the insurance company and reject his argument that insurance company be exonerated from the liability. I hold that the appellant insurance company is liable to pay compensation to the claimants jointly and severally.

24. Now 1 come to the appeal preferred by the claimants. The learned Tribunal awarded Rs. 42,250/- to the claimants. A perusal of the record demonstrates that the deceased Kumari Veena was a meritorious student. She passed her Fifth Standard Examination in 1st Division. Her marks sheet Ex. 9 was produced before the learned Tribunal. She secured 921 marks out of 1400 i.e. about 66 per cent. But her meritorious career was not considered by the learned Tribunal while passing the impugned award. The amount granted by the learned Tribunal cannot be termed as sufficient in the facts and circumstances of the case and it is required to be stepped up. The ends of justice would be met if it is stepped up from Rs. 42,500 to Rs. 75,000/- with interest at the rate of 12 per cent per annum from the date of filing of the application.

25. Resultantly, S. B. Civil Misc. Appeal No. 487 of 1995 fails and is hereby dismissed. S. B. Civil Misc. Appeal No 208 of 1995 filed by the claimants is partly allowed and award of the learned Tribunal is directed to be stepped up from Rs. 42,250/- to Rs. 75,000/- with interest at the rate of 12 per cent per annum from the date of filing of the application. It is however made clear that the vehicle owner as well as the insurance company shall be jointly and severally liable to pay the compensation. The record of the case be sent back forthwith.