(2018) 08 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 2101 of 2018

HDFC ERGO General Insurance Company Limited @APPELLANT@Hash Udairam, Udaram

Date of Decision : 21-08-2018

Acts Referred:
Motor Vehicles, Act, 1988 — Section 2, 181

Citation : (2018) 08 RAJ CK 0124

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Jagdish Vyas, Govind Suthar

Final Decision : Dismissed

Judgement

This appeal is directed against the judgment and award dated 1/6/2018 passed by the Motor Accident Claims Tribunal, Jalore (â??the Tribunalâ??),

wherein, the Tribunal has awarded a sum of Rs.3,00,000/-Â as compensation along with interest @ 7% p.a. from the date of application i.e.

17/1/2014. Further, though the Insurance Company has been exonerated, direction to â??pay and recoverâ?? has been given.

Application for compensation was filed by the claimant inter alia with the avements that on 5/9/2013 at about 3.00 pm he was riding on his motorcycle

when the offending motorcycle being driven by Hukma Ram rashly and negligently came from the opposite direction and collided with his motorcycle,

resulting in grievous injuries to the claimant on his feet, resulting in a fracture. Based on the averments made in the application, compensation to the

tune of Rs.7,35,000/- was claimed.

The non-claimant filed reply to the application and alleged that the accident occurred on account of negligence of the claimant himself. The vehicle

was insured with the respondent Insurance Company and that he was in possession of a valid and effective driving licence and, therefore, the

application was liable to be rejected.

The Insurance Company filed its reply alleging that the driver of the insured vehicle was not in possession of a valid and effective driving licence as

challan was filed against him under Section 2/181 of the Motor Vehicles, Act, 1988 and as thereÂ is violation of policy condition, the Insurance

Company cannot be held liable.

After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by respondent

Hukma Ram. While deciding the issue pertaining to liability of Insurance Company, the Tribunal came to the conclusion that though the driver was not

in possession of a valid driving licence, the Insurance Company was required to first make payment of the amount of compensation and then recover

the same from owner-driver.

It is submitted by learned counsel for the appellant that the Tribunal committed grave error in ordering for pay and recover in a case where admittedly

the driver-owner was not in possession of a valid and effective driving licence.

With reference to the judgment in National Insurance Company Ltd. vs. Swaran Singh : (2004) 3 SCC 297, it was submitted that in term of the

principles laid down therein, direction to pay and recover could not be made by the Tribunal and, therefore, the award impugned to the said extent

deserves to be quashed and set aside.

Learned counsel for the respondent-claimant caveator supported the judgment impugned. It was submitted that the issue raised by the appellant

Insurance Company is covered by the judgment in Pappu & others vs. Vinod Kumar Lamba & Anr. : (2018) 3 SCC 208, wherein, while considering

the judgment in the case of Swaran Singh (supra), it was specifically laid down by Honâ??ble Supreme Court that the direction to pay and recover

could very well be made and, therefore, there is no substance in the appeal filed by the appellant Insurance Company.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is not in dispute that the Tribunal recorded the finding that the driver-owner was not in possession of a valid and effective driving licence, however, it ordered for pay and recover.

The Honâ??ble Supreme Court in the case of Pappu (supra) posed a specific question pertaining to the above nature direction and after referring to

the judgment in the case of Swaran Singh (supra) it was laid down as under:

â??15. Be that as it may, no grievance about the quantum of compensation awarded by the Tribunal has been made by the appellant claimants (either

before the High Court or before us in this appeal). Hence, that issue does not warrant any scrutiny. Similarly, the owner of the vehicle (Respondent 1)

has not challenged the findings of the Tribunal as affirmed by the High Court in favour of the insurer (Respondent 2), including on the factum that the

vehicle was driven by a person who did not have a valid driving licence at the relevant time.

16.Â Â Â Â Â Â The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the

claim amount, with liberty to recover the same from the owner of the vehicle (Respondent 1)?

17.Â Â Â Â Â Â This issue has been answered in National Insurance Company Ltd. In that case, it was contended by the insurance company that

once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the

driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the

insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The threeJudge Bench,

after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. â?¦â?¦â?¦â?¦.

18.Â Â Â Â Â Â â?¦â?¦â?¦..

19.Â Â Â Â Â Â In the present case, the owner of the vehicle (respondent 1) had produced the insurance certificate indicating that vehicle No. DIL

5955 was comprehensively insured by respondent 2 (insurance company) for unlimited liability. Applying the dictum in National Insurance Company

Ltd., to subserve the ends of justice, the insurer

(respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the

owner of the vehicle (respondent 1) in accordance with law.

20.Â Â Â Â Â Â Accordingly, the appeal is allowed to the extent that the compensation amount awarded by the Tribunal and confirmed by the High

Court shall be paid and satisfied by the insurer (respondent 2) in the first instance, with liberty to recover the same from the owner of the vehicle

(respondent 1) in accordance with law.

21.Â Â Â Â Â Â Appeal is disposed of in the aforementioned terms with no order as to costs.â?? (emphasis supplied)

As the Honâ??ble Supreme Court in the above judgment after taking into consideration the judgment in the case of Swaran Singh (supra) has laid

down that in a case vehicle was driven by a person who did not possess a valid driving licence at the relevant time, the Insurance Company can be

directed to pay the amount of compensation with liberty to recover the same from the owner of the vehicle, the issue raised by the learned counsel for

the appellant stands fully covered by the pronouncement of Honâ??ble Supreme Court and, therefore, the direction given by the Tribunal cannot be

faulted.

In view thereof, there is no substance in the appeal and the same is, therefore, dismissed.