
(2009) 07 DEL CK 0424
In the Delhi High Court
Case No : Mac. APP. 624 of 2008

Inderjeet Singh

APPELLANT

Vs

Sudha Devi and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12

Citation : (2009) 07 DEL CK 0424

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Anil K. Kher and M.K. Awtaney, for the Appellant; Sushil Kumar and A.K. Soni, for R-3, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby the learned Tribunal has awarded a sum of Rs. 5,86,672/- against the appellant.

2. The accident dated 8th August, 2006 resulted in the death of Subhash Singh @ Subhash Kumar, aged 20 years. The deceased was survived by his mother, who filed the claim petition before the learned Tribunal.

3. The deceased was standing on the road near C-118, New Sabzi Mandi, Ajadpur, Delhi when he was hit by truck bearing No. HR-38 J-8787. The vehicle in question was validly insured with the Oriental Insurance Company Ltd., who defended the claim petition before the learned Tribunal on the ground that the driver was not holding a valid driving licence at the time of the accident.

4. The offending vehicle was driven by Gautam Thakur who appeared in the witness box as R1W1 and deposed that he was holding a valid driving licence on the date of the accident. He further deposed that he has obtained a certificate from the Transport Authority, Alipur. The receipt of the application for the issuance of the certificate is Ex.R1W1/1. The Certificate issued by the Transport

Authority is Ex.R1W1/2. R1W1 further deposed that he obtained a report in March, 2008 which is Ex.R1W1/4 and the receipt of the application for the Certificate is Ex.R1W1/3. As per the Ex.R1W1/2, the driver is authorized to drive LTV and transport vehicle. As per Ex.R1W1/4, the driving is authorized to drive LMV - non transport, transport, LTV and HGV.

5. Respondent No. 3 produced Vikram Singh in the witness box as R3W1 who deposed that notice u/s 12 Rule 8 CPC was issued to the driver and owner of the offending vehicle who did not respond. R3W1 further deposed that as per the verification report Ex.R3W1/4, the driver was not authorized to drive HTV. As per the certificate Ex.R3W1/4, the driver was authorized to drive LMV transport vehicle.

6. The appellant has challenged the findings of the learned Tribunal on two grounds. First ground of challenge is that the driver of the offending vehicle was authorized to drive the heavy motor vehicle at the time of the accident. The second ground of challenge is that respondent No. 3 has settled another OD Claim (Own Damage claim) arising out of another accident relating to heavy goods vehicle driven by the same driver on the basis of the independent verification carried out in that claim in which it has been accepted and admitted by respondent No. 3 that the driver was holding a valid driving licence duly authorized to drive a heavy goods vehicle. The appellant also filed the relevant documents of that claim as Annexures A - 8 and A - 9.

7. Vide order dated 1st April, 2009, respondent No. 3 was directed to produce the file of another claim pointed out by the appellant to verify the averments made by the appellant. Both the parties were also directed to obtain fresh certificates from the concerned Transport Authority regarding the validity of the driving licence in question.

8. In compliance with the order dated 1st April, 2009, the appellant has produced a certificate from the Transport Authority, Alipur in which it certified that Gautam Thakur was holding licence bearing No. WB-20198624100 (old driving licence No. WB-19-19006218) in respect of light motor vehicle - non transport and transport vehicles. The driving licence for non-transport vehicles is valid from 7th January, 2008 to 6th January, 2016 and driving licence for transport vehicles is valid from 14th December, 2008 to 13th December, 2011. It is further certified by the Licensing Authority that the driver is authorized to drive all types of vehicles i.e. light, medium and heavy vehicles and as per the computer record available, the driving licence was also valid during the period from 14th December, 2005 to 13th December, 2008.

9. The appellant filed the aforesaid certificate on 4th May, 2009 and copy thereof was supplied to respondent No. 3. Respondent No. 3 has also submitted the verification report from the Transport Authority and the certificate submitted by respondent No. 3 is same as submitted by the appellant.

10. Since same certificates from the Transport Authority have been submitted by

the appellant as well as respondent No. 3, it is treated as an admitted document and according to the said verification report issued by the Licensing Authority, Alipur, it is clear that the driver of the offending vehicle was authorized to drive transport vehicle on the date of the accident.

11. Respondent No. 3 has also produced the file to another Own Damage Claim referred to by the appellant in his appeal. The said file reveals that the driving licence of the driver involved in that case was verified by the Investigator, Mr. J.N. Chakravorty who vide report dated 21st January, 2008 verified/confirmed that the driver was authorized to drive light motor vehicle - non-transport and transport vehicles. The driving licence held by the driver was held to be genuine. The claim file also contains a verification report by the surveyor, Mr. Anil Bansal, who verified the driving licence from the Licensing Authority. On the basis of the verification report of the Inspector and the surveyor, the own damage claim was settled by the Oriental Insurance Company Limited.

12. On the basis of the verification report submitted by the Licensing Authority, Alipur and the certificate issued by the Licensing Authority, Alipur, it is held that the driver, Gautam Thakur was authorized to drive the offending vehicle at the time of the accident and, therefore, respondent No. 3 is liable to pay the award amount to the claimants. The findings of the learned Tribunal to the extent that the driver was not authorized to drive the offending vehicle are set aside.

13. The appeal is allowed and the impugned award is set aside to the extent that the respondent No. 3 has been exonerated from the liability to pay the award amount. The award is modified to the extent that the claimants are entitled to the award amount of Rs. 5,86,672/- along with interest thereon at the rate of 8% per annum from the date of the award till payment from respondent No. 3.

14. The appellant has deposited Rs. 4,97,156/- which is 75% of the award amount along with interest thereon with the Registrar General of this Court on 29th January, 2009 and the same has been released to the claimant in terms of the order of this Court and there is stay with respect to the 25% of the award amount along with interest thereon. In view thereof, respondent No. 3 is directed to pay the aforesaid amount of Rs. 4,97,156/- along with interest thereon @ 9% per annum from 29th January, 2009 till payment to the appellant within 30 days. The stay with respect to the 25% of the award amount is vacated and the respondent No. 3 is directed to deposit 25% of the award amount along with up to date interest with the learned Tribunal within 30 days. The Registry is directed to refund the statutory amount of Rs. 25,000/- to the appellant through counsel within four weeks.

15. This Court is inclined to impose the cost of Rs. 25,000/- on the respondent No. 3. However, on persuasion of Mr. A.K. Soni, the cost is reduced to Rs. 15,000/- which shall be paid by the respondent No. 3 to the appellant within four weeks.

16. Copy of this order be given dasti to counsel for both the parties. Copy of this

order be also sent to the claimants as well as their counsel.