
(2012) 01 DEL CK 0088
In the Delhi High Court
Case No : MAC App. 652 of 2007

Kishan Lal and Another

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0088

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Bhupesh Narula, for the Appellant; Vidhi Gupta, for R-2 to R-7, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellants impugn the judgment dated 12.04.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 6,15,000/- in favour of Respondents No.2 to 7 recovery rights were granted to the first Respondent (United India Insurance Co. Ltd.) on the ground that the second Appellant did not possess a valid and effective driving licence on the date of the accident (i.e. 23.04.2004). The judgment is also challenged on the ground that there was no material produced during the inquiry to reach a conclusion that the Tempo No.HR-38G-8018 was being driven rashly or negligently by the second Appellant at the time of the accident. The quantum of compensation is also claimed to be exorbitant and excessive.

2. It is not in dispute that the driving licence No.P04012000172033, which was valid for driving motorcycle and LMV (NT), was issued by the licencing authority on 11.01.2000 and was valid up to 10.01.2020. The second Appellant was driving a goods vehicle i.e. a Tempo No.HR-38G-8018 at the time of the accident. The first Respondent (the Insurer) examined R3W1 Naresh Chand, Record Clerk, Motor Licencing Authority, (West Zone) Janakpuri. He proved report Ex. R3W1/1 and testified that the driving licence (in question) was valid for motorcycle and LMV (NT). He deposed that Swaraj Mazda was a public commercial vehicle. The

holder of the driving licence Mark "RX" was not authorized to drive Swaraj Mazda.

3. According to Section 14(2)(a) a driving licence for a transport vehicle when issued will be effective for a period of 3 years subject to the condition where the licence is to drive a transport vehicle carrying goods of dangerous or hazardous nature, it would be effective for a period of one year. In case of non-transport vehicle a licence once issued is valid for a period of 20 years. The licence in this case issued on 11.01.2000 was valid up to 10.01.2020. It is also proved on record by RW3W1's testimony that the second Appellant was not authorized to drive the transport vehicle. Thus I agree with the Claims Tribunal's finding that the second Respondent was not authorized to drive the offending vehicle. In Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , it was held that if a person holding a driving licence for a period of 20 years then a presumption arises that it was meant for a vehicle other than a transport vehicle, as tenure of the driving licence granted for a transport vehicle could not exceed 3 years and unless there is an endorsement to drive a transport vehicle on a driving licence for LMV, the holder cannot drive a goods vehicle. Para 21 to para 26 of the report in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, are extracted hereunder for ready reference:

21. Licence having been granted for a period of 20 years, a presumption, therefore, arises that it was meant for the purpose of a vehicle other than a transport vehicle. Had the driving licence been granted for transport vehicle, the tenure thereof could not have exceeded to three years.

22. In National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, this Court noticed the aforementioned development in the matter of grant of licence to a transport vehicle stating that the same became effective from 28-3-2001 in the following terms: -

20. 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.

21. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

23. The effect of the different terms of licences granted in terms of the provisions of Sections 2(14) and 2(47) has also been noticed by this Court in New India Assurance Co. Ltd. v. Prabhu Lal, 2009 1 SCC 696 stated: -

"30. Now, it is the case of the Insurance Company that the vehicle of the complainant which met with an accident was a "transport vehicle". It was submitted that the insured vehicle was a "goods carriage" and was thus a

"transport vehicle". The vehicle was driven by Ram Narain, who was authorised to drive light motor vehicle and not a transport vehicle. Since the driver had no licence to drive transport vehicle in the absence of necessary endorsement in his licence to that effect, he could not have driven Tata 709 and when that vehicle met with an accident, the Insurance Company could not be made liable to pay compensation.

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37. The argument of the Insurance Company is that at the time of accident, Ram Narain had no valid and effective licence to drive Tata 709. Indisputably, Ram Narain was having a licence to drive light motor vehicle. The learned counsel for the Insurance Company, referring to various provisions of the Act submitted that if a person is having licence to drive light motor vehicle, he cannot drive a transport vehicle unless his driving licence specifically entitles him so to do (Section 3). Clauses (14), (21), (28) and (47) of Section 2 make it clear that if a vehicle is "light motor vehicle", but falls under the category of transport vehicle, the driving licence has to be duly endorsed u/s 3 of the Act. If it is not done, a person holding driving licence to ply light motor vehicle cannot ply transport vehicle. It is not in dispute that in the instant case, Ram Narain was having licence to drive light motor vehicle. The licence was not endorsed as required and hence, he could not have driven Tata 709 in the absence of requisite endorsement and the Insurance Company could not be held liable.

38. We find considerable force in the submission of the learned counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question."

24. The Court distinguished its earlier judgment in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., stating: -

"41. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable."

25. However, in the present case, the finding of fact arrived at that the vehicle in question was not proved to be a goods vehicle is not correct. The Regional Transport Officer, in his deposition, stated that the vehicle in question was a

goods vehicle.

26. From the discussions made hereinbefore, it is, thus, evident that it is proved that Respondent 6 did not hold a valid and effective driving licence for driving a goods vehicle. Breach of conditions of the insurance is, therefore, apparent on the face of the record.

4. Thus, there is no manner of doubt that the second Respondent possessed a licence to drive LMV (NT) and, therefore, did not possess a valid and effective driving licence to drive a goods vehicle. The compensation having been already deposited and withdrawn the first Respondent is entitled to recover the compensation awarded in favour of Respondents No.2 to 7 (Claimants).

NEGLIGENCE: -

5. While dealing with the issue of negligence the Tribunal held as under: -

9. The case of the complainant is that on 23.04.04 deceased Magan along with his brother in law were going to Kela godown to buy bananas from there. When they reached near Rail patri all of sudden offending vehicle No.HR38G-8018 being driven by Respondent No.1 rashly and negligently hit the deceased. Deceased fell down on the road. Deceased was removed to Hindu Rao Hospital where he was declared dead. FIR No.358/04 was registered by the police of Police Station Shalimar Bagh on the statement of the brother in law of deceased. PW2 Shri Doodh Nath is eye witness of the accident. He had stated that on the date of a accident he along with deceased went to Kela Godown for buying bananas. One tempo bearing vehicle No.HR38G-8018 was parked by the side of the train. Deceased was standing behind the said tempo which was being loaded. Suddenly driver of the said tempo reversed the same without blowing any horn without assistance of any person. While doing so it hit against deceased and due to this deceased sustained severe injuries. Deceased was taken to hospital where he was declared dead. The Respondent No.1 has been made accused in the FIR No.358/04. All these facts proved by the petitioners are sufficient and resipsa loquitor in explaining the rash and negligent driving by Respondent No.1. Post mortem report Ex. PW4/2 shows that the deceased Magan died due to accident. Hence this issue No.1 is decided in favour of the petitioner.

6. It is urged by the learned counsel for the Appellants that there was no question of rash or negligent driving as the driver was only reversing the Tempo. The contention is noted to be rejected. It cannot be said that excessive speed is a sine qua non for driving a vehicle rashly or negligently. What is required to be seen is whether the driver of the vehicle had taken adequate care and caution while the driving the vehicle. In the instant case the driver reversed the vehicle without taking adequate care about the person, who may be standing behind the goods vehicle, which was being loaded at that time. The second Respondent should have taken care to see if somebody was present behind the Tempo before reversing the same. In the circumstances, the conclusion reached by the Claims Tribunal cannot be faulted. I affirm the Claims Tribunal's finding on this aspect.

QUANTUM: -

7. During inquiry before the Tribunal evidence was led that the deceased used to sell Bananas and earned Rs. 6,000/- per month. In the absence of any cogent evidence as to the deceased's income the Tribunal took the minimum wages of an unskilled worker as Rs. 2,862/- added 50% on account of inflation and computed the loss of dependency as Rs. 4,68,000/-, which was rounded off to Rs. 4,70,0000/-. In view of the judgment of this Court in National Insurance Company Ltd. Vs. Renu Devi and Others, ; The New India Assurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , the Tribunal's finding with regard to the computation of loss of dependency cannot be faulted.

8. The Tribunal granted a sum of Rs. 25,000/- on account of loss of consortium and Rs. 20,000/- each to Respondents No.2 to 7 on account of loss of love and affection and Rs. 20,000/- towards funeral expenses. Normally, a notional sum of Rs. 10,000/- is awarded towards loss of consortium. I am supported in this view by Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The compensation of Rs. 20,000/- each towards loss of love and affection to Respondents No.3 to 7 was also on the higher side. As per reports of the Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, , only Rs. 25,000/- was granted (in total to all the claimants) under the head of loss of love and affection.

9. No compensation was awarded towards loss of estate. Some compensation ought to have been awarded under this head. Since, the number of dependents was four, deduction of 1/4th was required to be made towards personal and living expenses of the deceased, there would be consequent enhancement in the loss of dependency under that head. In the circumstances, the overall compensation of Rs. 6,15,000/- awarded by the Tribunal cannot be said to be exorbitant or excessive. The same, to my mind, is just and fair.

10. The compensation awarded was released in favour of Respondents No.2 to 7. Respondent No.1 was rightly granted the recovery rights against the first and the second Appellant.

11. The Appeal is devoid of any merit, the same is accordingly dismissed.