(2012) 01 DEL CK 0049

In the Delhi High Court

Case No : MAC App. 504 of 2009

Laxman Singh APPELLANT

Vs

National Insurance Company Ltd. and Others RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 139, 18, 6

Citation : (2012) 01 DEL CK 0049

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

Bench : Single Bench

Advocate : Anand Vardhan Sharma, for the Appellant; Navneet Goyal, for R-2 and 2D, Ms. Manjusha Wadhwa with Ms. Angana Goswami for R-3, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These are two Cross Appeals against a judgment dated 04.09.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby it awarded a compensation of Rs. 8,90,000/- for the death of Jai Singh Sharma, which occurred in a motor accident on 26.06.2003.

2. The grievance of the Appellant (hereinafter referred to as "owner") in MAC. APP. No.504/2009 being owner of Truck No.HR-55-6608 is that his driver Pappu (the third Respondent herein) did possess a valid and effective driving licence on the date of the accident; thus no recovery rights could have been granted to the Insurer (National Insurance Co. Ltd.) against him. In MAC. APP. No.96/2012 preferred by Respondents No.2 to 2D (hereinafter referred to as the "Claimants"), the challenge is to the quantum of compensation on the ground that the deceased''s future prospects were not taken into consideration.

3. Adverting to MAC. APP. No.504/2009 preferred by the owner, the driving licence Mark "A" filed during inquiry before the Tribunal was got verified in pursuance of the order of this Court dated 22.10.2009 and the same has been

found to be valid.

4. It is urged by the learned counsel for the Appellant that the Appellant filed his affidavit Ex. R2W2. The Appellant testified that a driving licence Mark "A" issued by the Licencing Authority, Agra, U.P. was shown to him by the driver Pappu at the time he was engaged. The said driving licence (after renewal Ex. R1W1/A) was valid at the time of the accident on 26.06.2003. The Appellant, therefore, was entitled to be indemnified by the Insurer. The learned counsel for the Respondent National Insurance Co. Ltd. submits that as per Section 6 a person is entitled to hold only one driving licence except a learner''s licence or a driving licence issued in accordance with the provision of Section 18 or a document authorizing a person to drive a motor vehicle in accordance with the rules made u/s 139 of the Motor Vehicles Act (the Act). Thus, the second licence possessed by the second Respondent was of no consequence. Reliance is placed on a judgment of Punjab & Haryana High Court in Bharat Kharbanda Vs. New India Assurance Company Limited and Others, wherein it was held that sub-section (i) of Section 6 strictly prohibits holding of two licences.

5. The facts of Bharat Kharbanda (supra) are not attracted to the instant case. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , it was held by the Hon''ble Supreme court that 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time. It was observed that Insurer must establish a willful violation of breach of policy condition. In United India Insurance Company Ltd. Vs. Lehru and Others, , it was held that if at the time of hiring a driver the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has, in fact, been issued by the competent authority or not. In this case not only that the Appellant (the owner) says that the driver showed him the licence Mark "A", but the said licence has been found to be valid on investigation by the first Respondent (the Insurer). The Appellant could not have been fastened with the liability to reimburse the amount paid by the Insurer to the Claimants. In this view of matter MAC. APP. No.504/2009 must succeed.

MAC. APP. No.96/2012

6. During inquiry before the Tribunal affidavit dated 15.09.2005 of Smt. Ramlesh Sharma, widow of deceased Jai Shiv Sharma was filed. She testified that her husband was getting a consolidated salary of Rs. 4,000/- per month from Advance Agro International Ltd. He was earning Rs. 2,000/- per month by running a newspaper agency under the name and style of Jai Shiv Newspaper Supplier. In cross-examination a suggestion was given to Smt. Ramlesh Sharma that her husband was not working with Advance Agro International Ltd. and was

not running any newspaper supply agency, which, of course, was denied by her on behalf of the Claimants. It is urged on behalf of the Claimants that the deceased''s future prospects were not considered. No evidence was led with regard to the future prospects. Even in the absence of any documentary evidence the Claims Tribunal accepted the deceased''s monthly income to be Rs. 6,000/- and deducted 1/4th towards deceased''s personal and living expenses to compute the dependency. The minimum wages of a matriculate at the time of the accident were Rs. 3,231/- only. The compensation of Rs. 8,90,000/- awarded by the Claims Tribunal was just and reasonable. No case for enhancement of compensation is made out. The MAC. APP. No.96/2012 is without any merit.

7. In view of the foregoing discussion MAC. APP. No.504/2009 is allowed and the Tribunal''s order granting recovery rights to National Insurance Co. Ltd. is set-aside. Cross Appeal being MAC. APP. No.96/2012 is devoid of any merit. The same is accordingly dismissed. No costs.