
(2002) 05 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 421 of 2001

Laxminarain

APPELLANT

Vs

Smt. Sona Devi and Another

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 133, 149

Citation : (2003) 3 WLN 666

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—This appeal is directed against the judgment and award dated 15.12.2000 passed by learned Motor Accident Claims Tribunal, Churu (hereinafter referred to as "the Tribunal") whereby the Tribunal awarded compensation of Rs. 39,000/- in favour of respondent claimant Sona Devi (for short "the claimant") and against appellant. However, respondent No. 2 National Insurance Company Limited (for short "the Insurance Company") was exonerated from liability and claim against the Insurance Company was dismissed.

2. Briefly stated facts to the extent they are relevant and necessary for decision of this appeal are that on 4.4.2000 at about 10.00 A.M. while the claimant was coming to her house from Tatiyon Ka Kuwa after selling items, she was hit by a tempo bearing No. RS-10-1P-2721, which was driven and owned by the appellant Laxmi Narain. The said tempo was driven at a great speed, rashly and negligently by the appellant. Due to this accident, the claimant sustained injuries on right leg, left hand and on other part of her person. The injuries resulted in fracture of her right leg and left hand. She was admitted to Government Hospital, Sardarshahar for treatment. The claimant preferred a claim petition before the Tribunal claiming compensation of Rs. 5,11,000/-. The said tempo was insured with respondent No. 2 the Insurance Company on the relevant date of the accident. The Insurance Company filed its written statement before the

Tribunal, wherein it was averred that as per terms of the policy, the Insurance Company can be held liable for compensation if it is found that the said vehicle was driven by its driver having a valid, competent and effective driving licence at the time of the accident. On the pleading of the Insurance Company, the Tribunal framed issue No. 4, which reads as under:

D;k foi{kh la[;k 2 chek dEiuh dh tckcnkos es vafdr vkifRr;ka lkFkZd gS\\ ;fn gkaW rks foi{kh la[;k 2 chek dEiuh {kfriwfrZ jkf" k vnk djus ds fy, ftEesnkj ugh gS\\

3. From language and format in which issue No. 4 is cast by the Tribunal, burden to prove this issue was placed on the Insurance Company. Before the Tribunal the claimant appeared as PW-1 and proved her case. The Insurance Company produced NAW-1 Mool Chand Surana, NAW-2 Bhanwarlal and NAW-3 Ramesh Kumar Sharma, a Lower Division Clerk (LDC) of the District Transport Office (for short "the DTO). Appellant appeared as NAW-4 and produced NAW-5 Poonamchand and NAW-6 Kaluram.

4. I have gone through the pleadings of the parties and oral and documentary evidence produced by the parties. I have carefully gone through the statements of various witnesses.

5. On appreciation of the evidence produced by the parties, the Tribunal reached to the conclusion that the claimant sustained injuries on her person due to rash and negligent driving of the said tempo by the appellant, who at the relevant time was owner of the tempo. While computing compensation, the Tribunal assessed and awarded a sum of Rs. 39,000/- in favour of the claimant. The Tribunal decided issue No. 4 in favour of the Insurance Company and exonerated it from liability.

6. Learned counsel for the appellant contended that the claimant failed to establish the accident by the tempo driven by the appellant. It was further contended that the compensation awarded by the Tribunal is excessive.

7. It is established from the evidence on record and more particularly from the statement of the claimant that due to rash and negligent driving of the said tempo, the claimant sustained as many as 8 injuries on her person. Injury report Exhibit-3 has been proved. Injury No. 5 on right leg and injury No. 8 on left elbow, which resulted in fracture of bones are grievous in nature. Reports of radiologist Exhibits-4 and 5 show the fracture of Tibia and Febula bones on right leg as also evidence of fracture of humerus bone above left elbow. The claimant has also produced FIR Exhibit-1, charge sheet Exhibit-2, site map Exhibit-6, site inspection note Exhibit-7, notice to appellant u/s 133 of the M.V. Act Exhibit-12, discharge ticket from SCLS Govt. Hospital, Sardarshahar Exhibit-13, various prescriptions of SCLS Govt. Hospital, Sardarshahar Exhibit-14 to 20.

8. The Tribunal having considered the evidence produced by the parties reached to the conclusion that the said accident resulted due to rash and negligent

driving of the tempo by the appellant. While computing the compensation, the Tribunal assessed and awarded a sum of Rs. 39,000/- in all. Having considered the submissions and entire evidence available on record, in my considered opinion, no error can be found in the finding recorded by the Tribunal holding the appellant negligent for the said accident as also for assessment of quantum of compensation. It is settled law that in appeal quantum is interfered if the compensation as awarded is inadequate or too excessive, as the case may be. Obviously, in the instant case, for 8 injuries out of which two resulted in fracture of Tibia and Febula as also fracture of humerus near elbow, award of Rs. 39,000/- cannot be said to be too excessive, on the contrary it is on lower side and, therefore, the findings on these two issues call for the interference.

9. Learned counsel for the appellant contended that the Insurance Company failed to prove breach of policy by the insured wilfully. He further contended that the appellant had a driving licence having authorisation to drive autoriksha with effect from 27.10.1986. The licence Exhibit-10 is on record, which shows that the appellant was authorised to drive the vehicle in question with effect from 27.10.1986 to 26.10.1989. Thereafter the said licence was renewed from 7.8.1990 to 6.8.1993 and from 30.9.1993 to 29.9.1996, 22.1.1997 to 21.1.2000, and 10.4.2000 to 9.4.2003. Thus, right from 27.10.1986 the appellant had a driving licence to drive the vehicle in question and the said licence was renewed from time to time and lastly it was renewed upto 9.4.2003.

10. In this context exclusion clause is provided u/s 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (for short "the Act") which provides that the insurer shall be entitled to defend the action. Section 149(2) of the Act reads as under:

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) 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; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-closure of a material fact or by a representation of fact which was false in some material particular.

11. Before coming into force the Motor Vehicles Act, 1988 w.e.f. 1st July, 1989, the Motor Vehicles Act, 1939 (for short "the Old Act") was applicable and so far as condition relating to driving licence is concerned, it is almost identical as under the Old Act. Section 96(2)(b)(ii) of the Old Act is also in paramateria to that of Section 149(2)(b)(ii) of the Act. A plain reading of Section 149(2)(b)(ii) of the Act makes it clear that the insurer shall be entitled to defend the action on the condition excluding 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. The policy of insurance Exhibit-NA-1 is on record, which provides under the caption "Persons or Classes of Persons entitled to drive" Any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. The expression "Effective Driving Licence" mentioned in the insurance policy has not been provided u/s 149(2)(a)(ii) of the Act. The Act provides the expression any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining the driving licence during the period of disqualification. Thus, the word effective driving licence incorporated in the policy is clearly against the provisions of Section 149(2)(a)(ii) of the Act. It is settled law that the Insurance Company can defend the action on the grounds enumerated u/s 149(2) of the Act and no more; any condition incorporated in the policy contrary to the Act is to be read down. Now the question arises as to whether the driver of the said tempo was not duly licensed and has been disqualified for holding or obtaining a driving licence during the period of disqualification. It is not the case of the appellant that the said tempo driver was not duly licensed and has been disqualified for holding or obtaining the licence, as It is evident from Exhibit-10 that the driver of the tempo had a driving licence with effect from 27.10.1986, which was renewed from time to time and lastly it was renewed up to 9.4.2003. The only break of period for renewal was from 22.1.2000 to 9.4.2000 and during this intervening period the accident occurred on 4.4.2000. The driver had a driving licence for more than 15 years and thereafter for further 3 years, this shows that he was not disqualified for holding or obtaining driving licence. The very purpose of providing such exclusion clause in the Act is that at the time of accident the person who drove the vehicle was qualified and skilled to drive the vehicle having authorisation by the competent licencing authority. In the instant case, it cannot be said that the driver of the tempo was not qualified or lacking

any skill to drive the tempo when he met the accident.

12. A Division Bench of Madras High Court in *New India Assurance Co. Ltd. Vs. C.B. Shannnkar and Others*, , held that we are not persuaded to hold that the Insurance Company had discharged its onus of proving that the driver never had a licence or was qualified from holding a licence. An another Division Bench of Madras High Court in *The United India Fire and General Insurance Company Limited Vs. Ayisa and Others*, , held that Section 96(2)(b)(ii) of the Old Act which is paramaterial of Section 149(2)(a)(ii) of the New Act cannot be so interpreted as to exonerate the insurance company from its liability where it specifically undertakes to cover liability in respect of a person who at the time of the accident has no effective licence but who had held a licence and was not disqualified from holding or obtaining a licence.

13. The insurance policy in respect of a motor vehicle is required to comply with the requirement of Chapter-XI of the Act, more particularly Section 149 of the Act. As noticed above the expression holds effective driving licence has not been provided under the Act and, therefore, the appellant Insurance Company cannot claim exoneration by incorporating condition in the policy which is not permissible under the law.

14. It was not the case of the Insurance Company before the Tribunal that the driver of the said tempo was not duly licensed and has been disqualified for holding or obtaining the driving licence. The only plea raised by the insurer is that the Insurance Company would be liable in the event of vehicle having been driven by its driver with valid, competent and effective driving licence. Neither the insured nor the claimant is under obligation to prove that the driver of the tempo was duly licensed. It was for the Insurance Company to plead and prove that the driver was not duly licensed and he has been disqualified for holding or obtaining a driving licence. Unless the Insurance Company pleads and proves above, the Insurance Company cannot be exonerated from the liability. More so, neither the Insurance Company pleaded nor proved that the driver of the tempo was disqualified for holding or obtaining the driving licence and rightly so in view of the fact that the driver of the tempo had a driving licence right from 27.10.1986 which was renewed from time to time and upto 9.4.2003. In the insurance policy Exhibit-NA-1, the Insurance Company has undertaken to indemnify the insured provided that the person holding effective driving licence at the time of the accident and is not disqualified for holding or obtaining such a licence. By the use of word "and" it goes to show that the Insurance Company has to prove that the driver of the said tempo not only was not duly licensed but also the Insurance Company has to plead and prove that the said driver was disqualified for holding or obtaining such a licence. The word "and" used in the policy assumes much importance. The plain language as it is read has to be understood. The Interpretation of Statutes by Maxwell, it is stated at Page No. 96 "To Suppress the mischief and advance the remedy" while interpreting the statutes. It is said to be duty of the judge to make such construction of a

statutes as shall suppress the mischief and advance the remedy Heydon's case (1584) 3 Rep. 7a; ante, p. 40. It is well to be remembered that the statute is capable of being interpreted in two ways. The Motor Vehicles Act is beneficial legislation and therefore, while interpreting the provisions of the Act, it must tilt towards the object sought to be achieved by the legislature. The very purpose of making compulsory third-party insurance is to protect the third-party risk.

15. In *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, , the Hon'ble Supreme Court observed as under:

These must therefore be interpreted in the spirit in which the same have been enacted accompanied by any anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the Legislature has given the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that this is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in disobedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.

16. Thus, in the instant case, the respondent Insurance Company failed to plead and establish that the driver of the said tempo was not duly licensed and has been disqualified for holding or obtaining such a licence. In this view of the matter, in my considered opinion, the Tribunal fell in error in deciding issue No. 4 against the claimant and in favour of Insurance Company. Thus, the finding of the Tribunal cannot be sustained and is set-aside and it is held that the Insurance Company is liable for compensation.

No other point was pressed.

17. In view of aforesaid discussion, this appeal is partly allowed to the extent that along with the appellant respondent No. 2 the Insurance Company is liable jointly and severally for the compensation. No order as to costs.