
(2004) 02 AHC CK 0238
In the Allahabad High Court
Case No : F.A.F.O. No. 880 of 1995

Manager, Oriental Insurance Co.

APPELLANT

Vs

Smt. Kasturi Devi and Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Citation : (2004) 5 AWC 4303

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : R.P. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This appeal has been filed against the impugned order dated 20.5.1995 passed by the Motor Accidents Claim Tribunal, Jhansi by which the claimant has been granted compensation of Rs. 1,84,000 with interest.

2. Heard learned Counsel for the parties.

3. The facts of the case are that on 30.1.1992 deceased Gajraj Singh was a pillion rider on a Bajaj Moped which was being driven by one Vinod Kumar Richhariya at about 11.30 a.m., and met an accident at Jhansi-Kanpur Road. The Moped collided with a Tractor due to which Gajraj Singh died on 28.2.1992 and Vinod Kumar suffered injuries. The claim petition was filed before the Tribunal claiming compensation of Rs. 14 lacs. The owner of the Tractor was impleaded as O.P. No. 1, the driver Bhagirath as O.P. No. 2, and the Appellant Oriental Insurance Company as O.P. No. 3.

4. Neither the owner nor driver of the vehicle appeared before the Tribunal and only the Appellant appeared. The Tribunal framed four issues which are as follows:

(i) Whether Gajraj Singh died due to the rash and negligent driving of Tractor No. URY 3819 by O.P. No. 2?

(ii) Whether the O.P. No. 2 possessed a valid driving licence of the alleged vehicle at the time of the alleged accident?

(iii) Whether the O.P. No. 3 is under an obligation to indemnify the O.P. No. 1?

(iv) Relief to which the claimants are entitled?

5. All the issues were decided in favour of the claimants who were widow, children and parents of the deceased.

6. The finding of the Tribunal on issue No. 2 was that the O.P. No. 2 had no valid driving licence. In fact both O.P. No. 1 and O.P. No. 2 never appeared before the Tribunal and they did not file any written statement, and the proceedings were held ex parte against them. The Insurance Company did not apply for summoning O.P. Nos. 1 and 2 nor prayed for summoning of the driving licence.

7. The Supreme Court in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, , held that the burden was on the Insurance Company to prove that the driver had a valid licence. If the Insurance Company does not discharge this burden then it cannot deny its liability. It was not for the claimants to establish that the driver had a valid licence.

8. From the facts of the case it appears that the Insurance Company did not prove whether by documentary or oral evidence as to whether the driver had a valid licence at the relevant time. On the other hand, photocopy of the driving licence was filed by the claimants which was not found to be genuine. The Tribunal came to the conclusion that the burden of proof was on the Insurance Company to examine the driver and owner of Tractor and to prove that the driver had got a valid licence. The Insurance Company should have applied to the Tribunal for summoning the licence from the Tractor driver or the owner, but it did not discharge its burden by examining the driver or the owner. The Tribunal was of the view that since the Insurance Company has not discharged its burden it could not deny its liability to pay compensation as it was not upon the claimants to prove that the licence of the driver was valid vide *Narcinva's* case (supra). The Tribunal was of the view that the Insurance Company could not take any benefit from the fact that the photocopy of the licence filed by the claimants was fake.

9. Learned Counsel for the Respondent has relied on the decisions of the Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, and *United India Insurance Company Ltd. Vs. Lehru and Others*, .

10. In *United India Insurance Co. Ltd. v. Lehru* (supra) the High Court had held that even if the licence was fake the Insurance Company has first to pay the claimants and then can recover the amount from the owner if in law they were entitled to do so. This view of the High Court was upheld by the Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh* (supra) in which it is observed (vide para 20) If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless it proves that the owner/insured

was aware or had noticed that the licence was fake and still permitted that person to drive. Even in such a case the Insurance Company would remain liable to the innocent third party, but it will be able to recover from the insured.

11. The decision in Lehu's case (supra), has been approved by the larger Bench of the Supreme Court decision in Swaran Singh (supra).

12. In view of the decisions of the Supreme Court there is no merit in this appeal and it is dismissed.