(2010) 02 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No''s. 754 and 755 of 1999

Mota Ram APPELLANT

Vs

Smt. Krishna and Others RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2011) 1 RLW 17

Hon'ble Judges : C.M. Totla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Totla, J.—Both these appeals arise out of the same judgment, whereby compensation award is passed in favour of heir dependants of two deceased who expired in collision of two vehicles.

2. On 1.7.96 at about 10.00 P.M. in jeep No. RJ 31 C 454 some persons, including Shri Jamaluddin and Shri Girdharilal were going from Nohar to Ravatsar and between Chahiya and Jeevnagar a gypsy No. DDA 5267, coming from opposite side collided with jeep so jeep over turned. A person (Shri Girdhari) died then and there and some injured were taken to hospital, on way one injured (Shri Jamaluddin) also died - FIR No. 149/96 for the offences of Sections 279 and 304A IPC was registered on statement of one of the injured Bhupendra Singh.

3. Gypsy was driven allegedly in a rash and negligent manner by Motaram, the Appellant and was owned by Shri Mukram. Police challan for the offences of Sections 279 and 304A IPC also presented against Motaram. Wife and sons of Shri Girdhari filing claim petition No. 41/97 - claimed damages Rs. 5,50,000/-. Wife and two minor sons filing claim petition No. 34/97, claimed compensation rupees thirty-six lacs. Two other injured S & B also filed claims respectively of 40/97 and 42/94.

4. Gypsy owner and driver alleged in their reply accepted vehicle being driven by Motaram, but denied other averments. Jeep owner asserted that accident happened exclusively due to fault of gypsy driver.

5. Both vehicles were insured with Respondent national insurance company and the insurer in reply asserted that both the vehicles were being driven in violation of the terms of policy both vehicles were on a hire, whereas insured for own use.

6. Awarded are Rs. 1,59,500/- on inferences of deceased Girdharilal 50 years, earning Rs. 15,000/- per annum so dependency of claimants being Rs. 12,000/-. Using multiplier of 11, on this count Rs. 1,32,000/- and on other counts Rs. 24,500/-, total Rs. 1,56,500/-.

7. For deceased Shri Jamaluddin, 40 years earning assessed at Rs. 15,000/- per annum and dependency of claimants at Rs. 10,000/- so applying multiplier of 16, allowed Rs. 1,60,000/- for dependency and Rs. 19,500/- on other counts, total Rs. 1,79,500/-.

8. Learned Tribunal arrived conclusions that (i) accident occurred, (ii) due to negligence and rash driving of gypsy driver Shri Motaram, (iii) Shri Motaram driving without valid license. Accordingly, absolving insurance company from liability, directed recovery from owner and driver of the jeep.

9. Learned tribunal awarding above sum, directed payment by gypsy driver and owner further directed that insurance company entitled to recover amount paid by than from the gypsy owner and driver.

10. Appellant is the gypsy driver.

11. Learned Counsel for the Appellant argues that insurance company is absolved on inference of Appellant not having valid and effective license whereas, Appellant had time to time renewed and that valid licenses for the period December, 84 to 1999 inclusive of the period 16.3.99 to 15.3.91 seems that trying to emphasize that only last numbers of the year are used so may be used. Contends that in any case Appellant time to time got renewed and had valid license for the period December 84 to 1999. Further submitted that if the Appellant is held to be not having valid license on particular day, then also it cannot affect merits because Appellant was having valid license from 1984 so the skill and expertise of Appellant for driving is apparent. Further argued that as deceased Girdharilal was above 50 so multiplier more than eight ought not to be applied, whereas applied is eleven. For Jamaluddin, submission is that his age being above 40 so proper multiplier cannot be high then 11 whereas applied is 16.

12. Learned Counsel for the Appellant vehemently submits that there has been no breach of any statutory provision or any condition of insurance policy. Submits that in any case, insurance company is liable and liability for payment is on Respondent insurance company.

13. Learned Counsel for the Respondent insurance company argued that provenly Appellant did not have valid license on the date of incident 1.7.96. Submits that license expired on 13.9.94 and thereafter renewal applied only on 5.7.96, i.e. after five days of this accident. Argued that under no law or provision, license to any for any type of vehicle for a period above 90 years is or can be issued and in license year is mentioned only by last two digits. Submits that for Appellant not having license, evidence also is of Assistant Manager Shri Ramesh Chand supported with certificate of DDO Ex.4. In support of contentions, placed reliance on Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others,

14. Carefully perused evidence, the judgment and records of memo of appeals.

15. Appellant, in his statement, admits that against him police after investigation had submitted charge-sheet. Regarding source and because of fault of whom, the accident occurred, evidence is of Shir Bhupendra Singh who also lodged the FIR. According to applicant, he was driving at an ordinary speed and it was rashness and fast driving of jeep, that resulted in collision. Having a glance at the evidence produced and also on the site inspection memos prepared in course of investigation along with position of vehicle, inference seems to be correct.

16. License produced by Appellant is Ex.A1 per which it was issued on 28.12.84 and valid upto 29.4.89 thereafter renewed from March, 88 to March, 91. Then renewed for period 14.8.91 to 13.8.94. After 13.8.94, the same was renewed from 5.7.96 to 4.7.99. There is nothing on record to suggest that revenwal applied within thirty days as provided by Section 15 of the Act, as such learned tribunal rightly inferred that Appellant driving the vehicle had no valid and effective license from 14.8.96 to 4.8.96. Section 15(3) may directly provides for holding of valid license.

17. Any argument on the basis of mentioning of last two numbers of the year is a fallacy. There is nothing on record to suggest that renewal applied within thirty days after 13.8.94 as is the period provided u/s 15 of the Act. As such learned tribunal inferred that Appellant driving the vehicle had no valid and effective license from 14.8.94 to 4.8.96. Section 15(3) of the Act mandatorily provides for necessity of valid license.

18. As Appellant was not having driving license so vehicle was driven in breach of conditions for applicability of the policy - thus in any case not according to terms of the policy.

19. Now, argument of the responsibility of the insurance company vis-a-vis the claimants. In relation to gypsy, its owner, driver and insurer, the deceased were third party. Such third party has nothing to do as to whether or not and to knowledge or not, to the concerned, the person was driving the vehicle with or without license.

20. Here, learned tribunal has fastened liability on Appellant, driver and also the

owner and the Appellant challenging it, requests payment by insurer. The claimants have not questioned the order and directions of the Tribunal. In contingencies, where vehicle is driven or used in violation of terms and conditions and specifically that valid license in addition to Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, also the principles are observed by Hon''ble the National Insurance v. Vidyadhar Apex Court in 2008(12) SCC 701 and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, Above being the position of law, in such cases when the driver is not having a valid license - question of liability of insurer apart liability of owner and driver stands. Here the Appellant driver was driving the offending vehicle without valid license - so his contention that insurance company liable to pay or indemnify cannot be tenable.

21. Estimating age of Shri Girdhari Lal as 50 and earning Rs. 15,000/-per annum and dependency of applicant at Rs. 12,000/-, applying multiplier of 11 and including other counts, compensation ordered is Rs. 1,56,500/-. Similarly for Jamaluddin, estimating age 40 years, earning Rs. 15,000/- per annum and dependency at Rs. 10,000/-, applying multiplier of 16 and inclusive other counts, allowed compensation of Rs. 1,79,000/-. A little lowering of the multiplier may lower amount by Rs. 15-20,000/- i.e. 8 to 10% of the total award and incident is of the year, 1996 so, therefore, in the totality of the factors, no case is made out for altering the quantum.

22. Learned Judge has authorized insurers to recover whatever amount they have paid.

23. In above view of the matter, there is no force in these appeals.

24. Accordingly, both the appeals are dismissed.

25. Other contentions raised are regarding multiplier used. Age of Shri Girdharilal is proved that 50 and dependency of the applicant at Rs. 12,000/-. Similarly for other deceased Jamaluddin, his age at being 40 years and dependency is assessed at Rs. 10,000/- per annum and use is multiplier of 16. Considering dependency and other factors, even if multiplier is reduced 1 or two, that does not make any significant difference. However, looking to above other factors, it cannot be said that the multiplier used is very high, as such no interference is required.