**(2010) 07 SHI CK 0212**

**In the High Court Of Himachal Pradesh**

**Case No :** FAO No. 477 of 2005

National Insurance Co. Ltd. APPELLANT

Vs

Gulsher and Others RESPONDENT

**Date of Decision :** 26-07-2010

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (2010) 07 SHI CK 0212

**Hon'ble Judges :** V.K. Ahuja, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

V.K. Ahuja, J.—This is an appeal filed by the Appellant/Insurance Company u/s 173 of the Motor Vehicles Act (hereinafter referred to as ''the Act'') against the award passed by the learned Motor Accident Claims Tribunal-I, Sirmaur at Nahan, H.P., dated 7.9.2005, vide which, a sum of Rs. 4.00 lacs has been awarded in favour of the claimants (Respondents No. 1 to 3 herein), alongwith interest.

2. Briefly stated the facts of the case are that Respondents No. 1 to 3 (hereinafter referred to as the claimants) filed a claim petition u/s 166 of the Act. They alleged that they are the son, daughter and widow of one Balkeesh, who was working as a labourer on a 1 truck bearing registration No. HNX-1295 belonging to Respondents No. 4 and 5 (original Respondents No. 1 and 2 before the learned Tribunal). It was alleged that the accident took place due to rash or negligent driving of the driver of the truck resulting in instantaneous death at the spot. The legal heirs of the deceased has filed the claim petition alleging that the age of the deceased was 42 years, he was earning Rs. 3,600/- per month while working as a labourer and in all a sum of Rs. 8.00 lac was claimed as compensation.

3. Respondents No. 1 and 2 in the claim petition denied the allegations. The

accident was not denied, but it was pleaded that the driver of the truck in question was attempting to save a motorcyclist coming from the opposite direction on wrong side and thus the accident took place. In reply by Respondent No. 3/Insurance Company, they took up the plea that the driver was not having a valid and effective driving license and the deceased was sitting in the truck in question as a gratuitous passenger.

4. The learned Tribunal vide its impugned award held that the accident was the result of rash or negligent driving of the driver and the Petitioners being the legal heirs of the deceased are entitled to compensation. In regard to the question as to whether the deceased was a gratuitous passenger, it was held that the deceased was not sitting in the truck as a gratuitous passenger but was sitting as a labourer. In regard to the license it was held that the driver was possessing a valid driving license to drive a heavy goods vehicle but the license was valid upto 21.12.1992 and had expired already on the date of the accident on 18.6.2004. However, it was held that even if the license had expired but since the deceased driver was having a valid license earlier and the expiry of the license was not held to be a breach of the condition and as such, the petition was allowed and a sum of Rs. 4.00 lac was awarded as against all the Respondents. There was no specific order if the amount was payable by Respondent No. 3/Insurance company or by Respondents No. 1 and 2 i.e. the owners of the vehicle.

5. I have heard the learned Counsel for the parties and have gone through the record of the case.

6. The appeal has been filed by the Appellant Insurance Company. Three grounds have been taken in the appeal. The first and most material ground taken was that the license in question was not a valid license on the date of the accident. The learned Tribunal has come to the conclusion on the basis of the evidence that the license was valid one for a heavy goods vehicle in favour of the driver but upto 21.12.1992. The license was not got renewed by the driver and as such on the date of the accident on 18.6.2004, the driver was not possessing a valid and effecting driving license. These findings of fact have not been challenged and the only challenge is as to whether still the Insurance Company is liable and there was any breach of conditions of the insurance policy accordingly since the driver was not possessing a valid and effective driving license on the date of the accident.

7. In support of the his submission, the learned Counsel for the Appellant has relied upon a decision of this Court in National Insurance Co. Ltd. Vs. Situ Devi and Others, wherein similar question arose before a learned Single Judge of this Court and though the driver had applied for renewal of the license after the accident, but it was held that the license will be valid from the date of application, which could be submitted within 30 days for renewal and as such it was held that since on the date of the accident, the driver was not having a valid and effective driving license, the Insurance Company was not liable. The learned Single Judge has referred to the provisions and had also referred to the decision

 

of the Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, as well as other decisions and had finally concluded that the Insurance Company was not liable to satisfy the claim. No ruling to the contrary has been cited by the learned Counsel for Respondents No. 4 and 5 and in view of the question having been considered by the learned Single Judge of this Court, it has to be held that the license in question was not a valid one and, therefore, the Insurance Company was not liable to pay the amount in question. The other points, as have been taken in grounds of appeal, are in regard to the income of the deceased or that the compensation awarded was excessive and that the deceased was a gratuitous passenger, but these questions need not be considered or discussed by this Court once it has been held that the Insurance Company was not liable and no cross appeal has also been filed by the owners.

8. In view of the above discussion, I accordingly hold that the appeal filed by the Appellant deserves to be allowed and the same is allowed accordingly and it is held that the Appellant is not liable to pay the amount of compensation awarded by the learned Tribunal, which is payable by the owners i.e. Respondents No. 4 and 5 jointly. However, there are no orders as to costs.

 