
(1997) 07 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No's. 118 to 121, 180, 181 and 184 to 186 of 1995

National Insurance Co. Ltd.

APPELLANT

Vs

Ishroo Devi and Others

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17A, 151

Citation : (1998) 1 ACC 641 : (1999) ACJ 615 : (1998) 1 ShimLC 285

Hon'ble Judges : Lokeshwar Singh Pant, J; Arun Kumar Goel, J

Bench : Division Bench

Advocate : Maharaj Baksh Singh and Ravi Bakshi, for the Appellant; K.D. Sood, Baldev Singh, V.D. Khidta, Radhey Shyam Gautam, K.D. Batish, Rajiv Jeevan, N.K. Thakur and Anuj Nag, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pant, J.—The aforesaid 9 appeals have been filed at the instance of National Insurance Co. Ltd. against separate awards made on 21.2.1995 by the Motor Accidents Claims Tribunal (I), Kangra at Dharamshala whereby 9 claim petitions arising out of a single accident were decided. Since common question of law and facts is involved in these appeals, hence they are being disposed of by this common judgment.

2. The necessary facts giving rise to these appeals are stated as below:

On 18.7.1993, bus bearing No. HPK 5277 belonging to Hamirpur Cooperative Transport Society and being driven by the driver Bihari Lal was coming from Pathankot side. At 8.15 a.m. the bus in question fell into a khud (gorge) at Chambi bridge when it was crossing the bridge. As a result of the accident as many as 8 persons, including driver Bihari Lal had died at the spot and number of other persons sustained injuries. Nine claim petitions were filed before the Motor Accidents Claims Tribunal by the claimants claiming compensation.

3. According to the claimants the accident took place on account of rash and

negligent driving by the driver of the bus in question.

4. The claims for compensation were resisted by the owner of the bus and the insurance company. The owner of the bus in question has not denied the accident nor the death of the persons. However, it was contended that the driver of the ill-fated bus was not rash and negligent while driving the bus. It was stated that in order to save persons travelling in a Maruti van which was coming from the opposite direction at reckless speed the driver of the bus tried to save those persons and turned the bus towards the side of the bridge where the PWD authorities had caroled out the work of the repair recently. The side of the bridge gave way and the bus fell into the khud. It was further averred that no warning sign had been put by the PWD authorities for the work of repairs having been carried out.

5. The appellant company, the insurer of the ill-fated bus resisted the claim petitions contending that the accident was not as a result of the rash and negligent driving on the part of the driver but it was a vis major. It was further stated that the bus was being driven by Bihari Lal driver who was not holding a valid driving licence and, therefore, the appellant company could not be held liable to pay compensation because under the terms of the policy a person holding valid licence could have driven the bus in question.

6. On the pleadings of the parties the Tribunal settled number of issues.

7. The Tribunal on consideration of materials on record came to the conclusion that the accident was the result of rash and negligent driving of the bus by its driver who had valid licence. On that finding the Tribunal held the appellant company jointly and severally liable along with the owner of the bus to pay the amount of compensation along with interest at the rate of 12 per cent per annum to the heirs and legal representatives of the victim and also to the injured person in each claim petition. It was further ordered that if the amount was not paid/deposited along with interest within 30 days from the date of the award, i.e., 21.2.1995, claimants shall be entitled to interest on the amount awarded at the enhanced rate of 15 per cent per annum from the date of petition till the date of payment/deposit of the amount besides assessing of counsel's fee. The present appeals have been filed by the insurance company for setting aside of the awards of the Tribunal.

8. Mr. M.B. Singh, learned Counsel for the appellant company, has urged two points before us to question the correctness and validity of the awards of the Tribunal. He has contended that the registered owner of the ill-fated vehicle, namely, Kalyan Singh was not a party before the Tribunal below and it was the duty of the Tribunal to implead him as party and, therefore, in the absence of the registered owner of the vehicle no liability could be fastened upon the appellant company. We cannot accept the said contention of the learned Counsel. It has been stated by the Tribunal in the award that after the conclusion of the evidence of the parties when the case was fixed for arguments, an application under Order

18, Rule 17-A of the CPC read with Section 151 came to be made by the Hamirpur Cooperative Transport Society, respondent herein for permission to lead additional evidence. The agreement sought to be produced was entered into between the respondent society and one Kalyan Singh s/o Durga Dass whereby said Kalyan Singh had agreed to attach his bus HPK 5277 with the respondent society for being plied on the routes of the society.

9. It has been found by the Tribunal that the agreement itself did not show that Kalyan Singh was the owner of the ill-fated bus as the said Kalyan Singh while appearing as R2W5 had specifically stated that he was not connected with the respondent society in any manner. It has been found by the learned Tribunal that copy of the insurance policy, Exh. RY, would go to show that the respondent society was insured in respect of the ill-fated bus. On the basis of the evidence on record, the Tribunal found that the agreement was not material for the purpose of deciding the claim petitions and the same could not be allowed to be produced. The application was accordingly dismissed. Neither the appellant company nor the respondent society made a challenge to the order of the learned Tribunal passed on the said application at the time of its decision. The contention of the learned Counsel merits rejection on another ground as well that the appellant company has not disputed in its written statement that it was not an insurer of the vehicle. In fact, in its reply it has admitted the correctness of the averments that respondent cooperative society was the owner of the vehicle. No suggestion was put to Kalyan Singh when he appeared in the witness-box that he was the registered owner of the vehicle. In the absence of the pleadings and evidence on record, the appellant company cannot be permitted to raise the said submission. On legal ground also the contention is not tenable. Section 147 of the Motor Vehicles Act, 1988, deals with requirements of policies and limits of liability. In Clause (b) of Sub-section (1) of Section 147 it is provided that in order to comply with the requirement of this Chapter, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2). This provision does not qualify that the person or classes of persons specified in the policy must be a registered owner.

10. The second contention of the learned Counsel was that the driving licences of Bihari Lal, copies of which were placed on record and accepted as RW I/A and RX were fake and forged. Their renewal was also fake. According to the learned Counsel the appellant company had no liability as there has been a breach of terms of the insurance policy and the respondent society has been negligent in not verifying the genuineness of the said licences and thereby it has infringed and violated the condition of the policy of the insurance. In support of this submission he has relied upon a judgment of the Supreme Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 and a Full Bench of the Punjab and Haryana High Court in *National Insurance Co. Ltd. Vs. Smt. Santro Devi and Others*,

11. We have gone through the aforesaid two decisions. We do not think that

these decisions have any relevance to the present case. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 the facts found were quite different. The vehicle concerned in that was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch snacks from the opposite shop leaving the engine of the truck running. The ignition key was in the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact, the driver had left the truck in care of the cleaner. The cleaner meddled with the engine and caused the accident. The question arose whether the insured owner had committed a breach of condition incorporated in the certificate of the insurance since the cleaner operated the vehicle in the fatal occasion without a valid licence. The Apex Court expressed the view that it was only when the insured himself places the vehicle in charge of a person who did not hold a driving licence, that he could be said to have committed breach of the condition of the policy. It was also observed that it must be established by the insurance company that the breach was on the part of the insured. Unless the insured is at fault and is guilty of the breach of the condition the insurer could not escape from the obligation to indemnify the insured. It was also observed that when the insured had done every thing within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach. It was further held that without the knowledge of the insured, if by driver's acts or omission other person meddled with the vehicle and caused the accident, the insurer would be liable to indemnify the insured. The insurer in such case cannot take the defence of breach of condition in the certificate of insurance.

12. The statement of law laid down in the above case was affirmed and reiterated by the Apex Court in *Kashiram Yadav v. Oriental Fire & Genl. Ins. Co. Ltd.* 1989 ACJ 1078 and *Sohan Lal Passi Vs. P. Sesh Reddy and others*,

13. In *Sohan Lal Passi Vs. P. Sesh Reddy and others*, the Apex Court observed that some of the significant amendments introduced in the Motor Vehicles Act, 1939 and Motor Vehicles Act, 1988 have been referred only to indicate that even Parliament is conscious that right to claim compensation by the claimant in connection with the motor vehicles accidents should not be defeated on technical ground.

14. In *National Insurance Co. Ltd. Vs. Smt. Santro Devi and Others*, a Full Bench of Punjab and Haryana High Court summarised the questions posed before it in para 69 of the judgment. It was observed therein that where an insured bona fide believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority, would not amount to violation of the conditions of contract or of insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of

its liability. It was further observed that in the absence of mens rea or knowledge or intention to violate the terms of policy or the provisions of the Act by the insured, the insurance company would not be discharged of its liability of indemnifying the insured or of its statutory liability to third party or its contractual liability to third party. We do not think that the ratio of the decisions in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 and *Punjab Full Bench* would be of any help to the appellant. On the contrary all the judgments referred to above have supported the defence of the respondent society on the facts and circumstances of the present cases.

15. In this case Pratap Singh, RW 1, Secretary, Hamirpur Cooperative Transport Society, respondent, has categorically stated that deceased Bihari Lal was employed as driver of the ill-fated bus after confirming and verifying his driving licence, Exh. RW I/A, which was issued from Mathura (UP). In his cross-examination, he has stated that the driving licence, Exh. RW I/A, was taken from the deceased driver at the time of his employment. He denied the suggestion of the appellant company that the driving licence was fake and photocopy of the fake driving licence was given to the company. Copy of the driving licence, Exh. RX, was produced by the insurance company whereas copy of another driving licence, Exh. RW I/A, was produced by the respondent society. The case of the appellant company before the Tribunal was that while submitting the claim in respect of the damage caused to the bus, respondent society had enclosed the copy of the driving licence, Exh. RX, with the claim forms. The respondent society has denied the copies of the claim forms, Exhs. R2W1/A and R2W1/B. These forms contain the signature of one Kalyan Singh for and on behalf of respondent society. Kalyan Singh while appearing as R2W5 has admitted his signatures on these documents but stated that he is not concerned with the respondent No. 1, society and that his signatures were obtained on blank forms by a surveyor of the appellant company. He has also stated that the relevant entries in the claim forms were not in his hand. His testimony was corroborated by Joginder Singh, Assistant Divisional Manager of the appellant company while appearing as R2W1. In his cross-examination the witness has admitted that the claim form has been filled in different inks and the handwriting differs at many places. It was also admitted that the handwriting and ink regarding information of driving licence is in separate hand. Nothing has come on the record as to in whose writing the claim form had been filled in. RW 1, Secretary of the respondent society has denied having produced/ submitted driving licence, Exh. RX, to the appellant company at the time of the lodging of the claim in respect of damage to the bus. In his cross-examination the appellant company did not choose to put to him claim forms R2W1/A and R2W1/B to ascertain whether the same were the claim forms submitted on behalf of the respondent society for claiming damage to the bus caused by the said accident. There is no evidence on record to prove that driving licence, Exh. RX, was produced/submitted to the appellant company by the respondent society along with the claim forms.

16. The driving licence, Exh. RX, appears to have been issued by Licensing

Authority at Chamba on 18.2.1986 and it was valid up to 17.2.1989. It was renewed by the Licensing Authority, Chamba, till 16.2.1991. It was again shown to have been renewed till 15.2.1995 vide endorsement No. 5174/C/82 dated 29.2.1992. Nar Singh, R2W2, Senior Assistant in the office of Licensing Authority, Chamba, has deposed that the driving licence, Exh. RX, was neither issued nor renewed by the office of Licensing Authority, Chamba.

17. Second driving licence, Exh. RWII A, is stated to have been issued in favour of driver Bihari Lal by Licensing Authority, Mathura (UP) by way of renewal of his previous driving licence No. 5518/kb/88 dated 12.2.1988 purported to have been issued by the Licensing Authority, Kanpur. Copy of the driving licence was Exh. R2W3/B. Jagdish Rawat, R2W3, Senior Clerk in the office of Licensing Authority, Mathura (UP) has stated that driving licence, Exh. RW 1/A, was issued in favour of Bihari Lal in view of his previous licence, Exh. R2W3/B. Ram Prashad, LCW1 and Parmod Kumar, LCW2 were the two officials from the office of the Licensing Authority (Urban) and Licensing Authority (Rural), Kanpur. They have stated that licence, Exh. R2W3/B, was never issued and/or renewed by their respective offices.

18 The learned Tribunal recorded a finding that driving licence, Exh. RW 1/A, has not been proved to be validly issued in lieu of previous licence, Exh. R2W3/B, by way of renewal. Admittedly, driver Bihari Lal had died in the accident on 18.7.1993. Exh. R2W3/D was the xerox copy of the application alleged to have been made for the renewal of the licence, Exh. R2W3/B, to the Licensing Authority, Mathura, under the dateline of 11.2.1994 much after the death of Bihari Lal and the driving licence on the basis of the said application was issued in favour of dead person and could not be held to be a valid one. The learned Tribunal has found that both the driving licences of driver Bihari Lal were not valid.

19. In the cases in hand, there is nothing on record to show that there has been a wilful infringement or violation of the exclusion clause on the part of the respondent society. No evidence has been led by the appellant company to show that the respondent society was having the knowledge that Bihari Lal driver was not holding a valid licence or that the licence held by him was fake and forged. Driver Bihari Lal was engaged by the respondent society about 6 months prior to the accident in question and he was found driving the vehicle with due care and caution. The Tribunal is right in holding that it is only when the respondent society was proved to have placed the vehicle in charge of a person who does not hold a driving licence, it could be said that the respondent society is guilty of breach of promise as contained in the exclusion clause of the insurance policy. Unless wilful infringement of the exclusion clause is shown on the part of the respondent, society, the insurer appellant company cannot escape from its liability under the insurance policy. We find from the record that there is no evidence brought on record by the appellant company to show wilful infringement of the exclusion clause by the respondent society and, therefore,

the appellant company cannot avoid its liability by pressing into service the exclusion clause. Therefore, on the basis of the judgments of the Supreme Court and the High Court referred to in the earlier part of the judgment, we are of the considered view that the awards of the Tribunal holding the appellant company jointly and severally liable along with the respondent society for payment of amount of compensation to the claimants are valid and legal.

20. So far the maintainability of cross-objections No. 275 of 1996 filed by the claimants in F.A.O. (MVA) No. 120 of 1995 preferred by the insurer is concerned, this matter has been set at rest by a Division Bench of this Court in National Insurance Co. Ltd. v. Rukmani Devi F.A.O. (MVA) No. 88 of 1988 with Cross-Objections No. 24 of 1992; decided on 4.9.1996 and Oriental Insurance Co. Ltd. v. Hem Shankar F.A.O. (MVA) No. 222 of 1989 with Cross-Objections No. 60 of 1990; decided on 24.7.1997. Following these decisions, cross-objections filed by the claimants are not maintainable and those are dismissed accordingly.

21. The learned Counsel for the appellant company has not challenged the correctness and validity of the awards on any other ground during the course of the arguments of the appeals.

22. In the result, for the reasons aforesaid, we dismiss the appeals. The awards passed by the Tribunal on 21.2.1995 shall stand affirmed.

23. However, the parties are left to bear their own costs.