
(2004) 10 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 573 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Nant Ram and Others		RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 62, 63, 74, 76, 77
Motor Vehicles Act, 1939 — Section 2(27)
Motor Vehicles Act, 1988 — Section 166, 173, 2(15), 2(16), 2(21)

Citation : (2005) 2 ACC 286 : (2005) ACJ 1408 : (2005) 1 ShimLC 226

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Devyani Sharma, for the Appellant; Jagdish Thakur and Romesh Verma, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—A short point is involved for consideration, examination and decision in this appeal by the appellant insurer u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 11.8.2000 passed by the learned Motor Accidents Claims Tribunal (2), Solan in M.A.C. Petition No. 9-S/2 of 1997. The point is with respect to the decision/finding by learned Tribunal on issue No. 4 relating to the validity of the driving licence allegedly possessed by respondent No. 3 herein Hari Krishan, who at the relevant time was the owner-cum-driver of truck No. HIS 496 which was involved in an accident on 8.3.1997 resulting in the death of deceased Babu Ram.

2. Following five issues were framed by the Claims Tribunal vide its order dated 20.4.1999:

"(1) Whether Babu Ram on 8.3.1997 while paddling cycle was hit by a truck bearing No. HIS 496 driven rashly and negligently by the respondent No. 1 as alleged? OPP

(2) If issue No. 1 is proved, whether the deceased Babu Ram sustained fatal injury to which he succumbed? OPP

(3) Whether the petitioners are entitled for compensation, if so, to what extent and from whom? OPP

(4) Whether the respondent No. 1 had no valid driving licence at the time of accident? OPR-2

(5) Relief."

3. In this case, I am concerned only with respect to the Tribunal's finding on the issue No. 4 inasmuch as whereas the Tribunal by deciding issue No. 4 has held that the licence allegedly in possession of respondent No. 3 was a valid document, the appellant feeling aggrieved from this finding of the Claims Tribunal has preferred this appeal only on the ground that the finding is wrong and that the licence in fact was not a valid or genuine document. To appreciate the perspective and the background in which the impugned finding has been given by learned Claims Tribunal, I have to refer to certain important facts having a close bearing on the outcome of this case.

4. The driving licence No. 123/SLN/85 was issued on 29.4.1985 by the Licensing Authority, Solan. This licence has been marked as Exh. RW-1/D by the Claims Tribunal and the unrebutted evidence on record clearly establishes beyond any iota of doubt that by this licence, respondent No. 3 was permitted to drive light motor vehicles as well as medium goods vehicles. The vehicle involved in the accident, being a truck and having registration No. HIS 496, was neither a light motor vehicle nor a medium goods vehicle because its registered laden weight as shown in column No. 12 of Exh. RW-1/C, the copy of the registration certificate of this vehicle, has been mentioned as 12180 kg. Even though in column 11 of Exh. RW-1/C, this vehicle's unladen weight has been mentioned as 5140 kg. for the reasons that I state hereafter, unladen weight is not relevant for our purposes at all because it is only the registered laden weight (mentioned as 12180 kg.) which is relevant for the decision of this appeal.

5. First and foremost, in the Motor Vehicles Act, 1988 the registered laden weight has not at all been defined. The expression "registered laden weight" was in existence and had thus been defined in Section 2(27) of Motor Vehicles Act, 1939 and this definition reads as under:

"2 (27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;"

6. Parliament in its wisdom while enacting the 1988 Act omitted the expression "registered laden weight" from the new legislation and instead introduced another expression "gross vehicle weight" and defined it in Section 2(15) of Motor Vehicles Act, 1988 to mean:

"2 (15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;"

7. As would thus be evidently clear, the term "registered laden weight" and "gross vehicle weight" carry exactly same, identical definition word by word, expression by expression, only the name "registered laden weight" has been changed into "gross vehicle weight". Despite the new Act having been in force already for a considerable length of time by now (almost 15 years), why has the registering authority in the present case not bothered to bring the format of the registration certificate in conformity with the provisions of the new Act, has not been understood by me. Despite the expression "registered laden weight" not being in existence any more in the new Act, why did the registration certificate, Exh. RW-1/C, contain an entry to that effect is also not understood by me. It is high time that appropriate corrections are made in the format of the registration certificate to bring it in conformity and at par with the provisions of the existing law, i.e., Motor Vehicles Act, 1988.

8. Be that as it may, since the expression "registered laden weight" is alien to Motor Vehicles Act, 1988, but in pith and substance since the registering authority has been continuing with the use of this expression in the format of the registration certificate, taking a cue from the definition of "gross vehicle weight" as occurring in Section 2(15) of the Motor Vehicles Act, 1988, I have no hesitation in holding that the entry registered laden weight--12180 kg. as occurring in column 12 of Exh. RW-1/C should be read as "gross vehicle weight--12180 kg." because the "gross vehicle weight" and the "registered laden weight" are identical, both carrying exactly same meaning and that it was actually the "gross vehicle weight" of the vehicle in question which was 12180 kg. and it was by a mistake, error, of course unwittingly, that registering authority continued with the expression "registered laden weight" rather than changing it to "gross vehicle weight" to be in conformity with the existing law on the subject.

9. Based on the aforesaid observations, the conclusion of fact thus which has now been arrived at by me is that the "gross vehicle weight" of truck No. HIS 496 was 12180 kg.

10. Light motor vehicle has been defined in Section 2(21) of existing 1988 Act to mean as:

"2 (21) "light, motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;"

11. Undoubtedly because the "gross vehicle weight" of vehicle HIS 496 was more than 7500 kg., this vehicle cannot be brought within the purview of the definition of a "light motor vehicle".

12. "Heavy goods vehicle" has been defined in Section 2(16) of the Motor Vehicles Act, 1988 to mean as under:

"2 (16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12000 kilograms;"

13. Because admittedly the "gross vehicle weight" of vehicle HIS 496 was more than 12000 kg. this vehicle would fall in the category of a "heavy goods vehicle". This vehicle cannot fall in the category of a "medium goods vehicle" because of definition of this expression contained in Section 2(23) of the Motor Vehicles Act, 1988 by which it has been made clear that a "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle. Since the vehicle HIS 496 is a "heavy goods vehicle" and since it is not a "light motor vehicle", it cannot be a "medium goods vehicle".

14. Undoubtedly because the driving licence, Exh. RW-1/D, authorised the respondent No. 3 to drive light motor vehicle and medium goods vehicle and since it had not authorised him to drive a heavy goods vehicle, the contention of the appellant that respondent No. 3 was not possessed of a valid driving licence ought to have been accepted by the Tribunal and a finding accordingly ought to have been returned on issue No. 4 in favour of the appellant but then a surprise was sprung arid in a very unusual manner. On 10.5.2000 Mr. R.S. Panwar, counsel of respondent No. 3, after the closure of the evidence in the Tribunal produced the photocopy of another driving licence purporting to be in the name of the respondent No. 3 and the Tribunal in a very exceptional and unusual manner, not known to law allowed the production of this document by the learned counsel and not only that, he also actually marked this document as Exh. R-1/A on 10.5.2000. Actually there is a confusion about the marking of this document because at page 65 of the Tribunal's record containing the statement of Mr. R.S. Panwar, Advocate, the marking of the document has been shown as Exh. R-1/A, on the face of the document, however, the marking is Exh. R-1/A-I. Rather than be detained on this trivial issue, I will refer henceforth to this document as Exh. R-1/A-I. Why did the Tribunal allow this document to be produced in the manner in which it has been done is not at all understood by me.

15. It is a cardinal, basic and established principle of evidence law that documents, other than public documents are tendered in evidence through witnesses who, after taking oath prove the documents appropriately as well as the contents of the documents, by way of leading direct evidence. Actually the documents are produced and proved through witnesses and their contents also established and proved either by way of primary evidence or secondary evidence but in any event the established and accepted mode of proving documents is by production of witnesses in the court who testify about the correctness, genuineness and authenticity of the documents as well as their contents, mostly through the medium of proving them as and by way of primary evidence and in certain given situations through the medium of secondary evidence. The purpose

of course is twofold; firstly, that such a witness appearing in the court is sworn and under oath testifies about a particular document, its genuineness and authenticity as well as its correctness and secondly once under oath and examination, this witness is subject to cross-examination by the opposite party so that the opposite party through the mechanism of cross-examination of such a witness can elicit appropriate information concerning the document itself with respect to its veracity, truthfulness, background, correctness, etc. etc. Enough indication of such requirement of law is found in Section 62 of the Evidence Act which refers to the documents as "primary evidence" and clearly suggests that such documents can be produced for the inspection of the court meaning thereby that through witnesses alone the documents have to be brought on record of the courts. Similarly, u/s 63 of the Evidence Act, "secondary evidence" has been defined and reading together these two sections, it can be safely said that documents, either by way of "primary evidence" or by way of "secondary evidence" or otherwise have to be appropriately and properly proved by their production in the courts through witnesses alone.

16. There is only one exception to the aforesaid rule of evidence law with respect to proof of documents and that exception relates only to the proof of public documents by production of certified copies of such documents. Section 74 of the Indian Evidence Act defines "public documents" which include documents forming the acts or records of the acts of the sovereign authority and of the official bodies and the Tribunals and also include documents from public officers, legislative, judicial as well as executive. u/s 76 of the Evidence Act every public officer having the custody of a public document, which any person has a right to inspect, has a duty to give to such a person on demand a certified copy of such document. u/s 77 of the Evidence Act the certified copies of public documents issued in the manner prescribed by Section 76 may be produced in proof of the contents of the public documents. The practice of allowing such documents to be brought on record by their mere production by a counsel and then even marking them as exhibits is very very unhealthy, very dangerous and the same is totally opposed to all principles of evidence law.

17. Even though undoubtedly, proceedings u/s 166 of the Motor Vehicles Act, 1988 may be summary in nature and the strict procedural laws may not be attracted in such proceedings, yet insofar as the requirement of the proof of disputed documents is concerned, the Tribunals should be well advised to keep in mind that the established norms emanating from the principles of evidence law must be followed even in such proceedings with a view to ensuring that the documents of suspicious or doubtful character or documents which are liable to be disputed by opposite party must not be allowed to be brought on record unless they are proved in accordance with the well established and well accepted norms and principles of evidence law.

18. In the present case, in a very exceptional and unusual manner the Tribunal permitted respondent No. 3 to introduce the second driving licence even though

all along this respondent never ever disputed the fact of his being issued and possessed the earlier driving licence bearing No. 123/SLN/85 (issued by Licensing Authority, Solan) which admittedly was in his name and which belonged to him. How could a person be issued two driving licences for the same period and how could he legitimately possess two driving licences is a matter which should also have fallen for consideration of the Claims Tribunal at that very time and before the second licence was allowed and permitted to be produced on record. The Tribunal at least should have applied its mind to the aforesaid aspect of the matter. Unfortunately, it did not do so. The Claims Tribunal's order dated 10.5.2000 read with the statement of Mr. R.S. Panwar, Advocate, recorded on that date thus establishes that the second driving licence Exh. R-1/A-I was allowed to be placed on record just like that, without it being formally proved in any manner. Mercifully, however, the Tribunal permitted the appellant to produce evidence in rebuttal and undoubtedly as the orders dated 23.5.2000, 19.6.2000 and 4.7.2000 would show that the Tribunal did afford opportunity to the appellant to produce evidence in rebuttal but since the appellant failed to do so within the aforesaid period on 28.7.2000, the Claims Tribunal closed appellant's right to produce evidence in rebuttal and proceeded to hear the case for final arguments.

19. At this stage, I pause to take notice of C.M.P. No. 1055 of 2000 filed by the appellant in this court in terms of Order 41, Rule 27, CPC for permission to produce additional evidence and the ground is that pursuant to the placing on record of the second licence, the appellant made enquiries from the Licensing Authority, Gauhati from where the second licence was alleged to have been issued in favour of respondent No. 3 and the result of such enquiries revealed that no such licence at all was issued by the Licensing Authority, Gauhati. In other words, in this application the stand of the appellant is that Exh. R-1/A-I is a fake document. As to why could not the appellant produce such evidence by way of rebuttal evidence within the time permitted by the Tribunal has been explained in paras 3 and 4 of this application and I find that indeed the appellant was prevented by sufficient cause to produce such rebuttal evidence in the Tribunal within the aforesaid limited period. After all the enquiries had to be made in Gauhati which undoubtedly has been a disturbed area and over and above that aspect of the matter, as providence would have it, the papers somehow got misdirected from Gauhati to Srinagar in Jammu and Kashmir State, another disturbed area and all this resulted in some delay on the part of the appellant in producing evidence in rebuttal in the Tribunal with respect to the second driving licence.

20. The Claims Tribunal unfortunately in a slipshod manner and without proper application of mind has relied upon both the licences. By totally misconstruing the definition of light motor vehicle and applying the same to vehicle No. HIS 496 the Tribunal first and foremost held that the earlier licence was valid and because the appellant did not produce evidence in rebuttal with respect to the second licence it went on to hold that in any event the second licence had authorised

respondent No. 3 to drive a heavy goods vehicle. On both the counts the Tribunal's findings are erroneous and contrary to the evidence on record as well as patently in violation of the express provisions of Motor Vehicles Act, 1988, which have been noticed by me earlier in this judgment.

21. For the foregoing reasons, I am convinced that a prejudice has been caused to the appellant with respect to the wrong finding by the Tribunal on issue No. 4 and that this prejudice can be undone by remanding the matter afresh to the Tribunal for its consideration with respect to the validity of the second driving licence, i.e., Exh. R-1/A-I (I have already clearly held in unequivocal terms that the first driving licence did not authorise or permit the respondent No. 3 to drive the vehicle No. HIS 496). In the process of reconsideration, the Claims Tribunal undoubtedly shall afford opportunities to the parties to lead evidence as well as evidence in rebuttal. Since the verification with respect to the second licence has to be got done from the Licensing Authority, Gauhati, a time-bound arrangement has to be evolved by the Tribunal whereby the evidence in proper form is got recorded, either by summoning the witness or by open Commission or by sending the interrogatories to be served upon the witness concerned through a Local Commissioner to be appointed in Gauhati with the aid and assistance of the District Judge, Gauhati or any other court/forum there.

22. Insofar as the appellant's liability to pay the compensation amount to the claimants is concerned, irrespective of whether the driving licence ultimately turns out to be false, fake or invalid, in the first instance, as held by their Lordships of the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, the appellant is liable to pay the award amount to the claimants and ultimately it would be entitled to recover it from respondent No. 3 if the finding on issue No. 4 goes in favour of the appellant.

23. In the result, therefore, the appeal is allowed. The judgment of the Claims Tribunal insofar as its finding on issue No. 4 is concerned, is set aside. The matter is remanded to the Tribunal for fresh consideration and passing of the fresh judgment/ award in the light of the aforesaid observations. The parties through their learned counsel are directed to appear before the Tribunal on 16.12.2004.

24. The record be sent back immediately and forthwith.

25. Whatever amount has been deposited by the appellant in this court shall be paid to the claimants-respondents, in addition thereto the appellant shall pay to the claimants-respondents balance amount, if not already deposited.

26. A copy of this judgment shall be sent to the Chief Secretary, Government of Himachal Pradesh, with a direction that it be circulated for the information of the concerned licensing authorities for bringing about the change/modification in the format of the registration certifications to be in conformity with the provisions of Motor Vehicles Act, 1988, if not already done.

27. Copies of this judgment shall be circulated to all the subordinate courts in Himachal Pradesh as well as to the Presiding Officers of the Motor Accidents Claims Tribunals for their information.