
(2006) 06 JH CK 0062
In the Jharkhand High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Shakti Transport Agency and Others		RESPONDENT

Date of Decision : 13-06-2006

Acts Referred:

Citation : (2008) 3 JCR 626

Hon'ble Judges : M.Y. Eqbal, Acting C.J.; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and award dated 30.3.2006 passed by Motor Accident Claims Tribunal, Dhanbad in Title (M.V.) Suit No. 84 of 2004 whereby he has awarded compensation for death of the deceased in a motor vehicle accident.

2. It appears that while the deceased was coming from his village Golhobar on a motorcycle and when the motorcycle reached Gaytri Colony, Kathara Bazar near Aashnapani more, one dumper bearing registration No. BR-20G-0662 being driven rashly and negligently dashed the motorcycle as a result of which the deceased came under the wheel of the dumper and consequently he died on the spot.

3. Defence was taken by the Insurance Company that the driver of dumper was holding licence of light motor vehicle and, therefore, Insurance Company has no liability. The tribunal framed the specific, issue i.e. Issue No. IV as to whether driver of the dumper has a valid driving licence at the time of accident. The said issue was discussed and finding was recorded in para-11 of the judgment. Relevant portion of para-11 is quoted hereinbelow:

In the instant case, on perusal of Ext.-X (photocopy of driving license) it appears that D.L. No. 2261/85/F/GRD in the name of Rajendra Prasad was originally issued by D.T.O. Giridih and the same was lateron renewed from time to time. There is also mention of "heavy goods vehicle" besides "light motor vehicle."

From perusal of Ex.-B, it appears that licensing authority Giridh has reported that D.L. No. 2261/85/F/GRD, in the name of Rajendra Prasad, son of Gobaradhan Prasad was issued to drive "light motor vehicle" only. The author of Ext.-B has not been examined in the case DW-1 Aftab Ahmad, who has proved Ext. B has admitted in paras-6 and 7 of his cross-examination that Ext-B was neither written nor signed in his presence. As a matter of fact Ext. B has not been properly proved and therefore it is not admissible in evidence. As stated above that there is mention of heavy goods vehicle besides light motor vehicle on the Xerox copy of the driving licence and therefore, under the circumstance it cannot be held that the driver Rajendra Prasad was holding a license to drive only light motor vehicle. Even it is presumed for the sake of argument that the driver was holding license to drive only light motor vehicle the insurance company has not led any evidence to show that there was a willful breach on the part of the insured in permitting his driver to drive heavy goods vehicle. There is also nothing on record to show that the non possessing of heavy goods vehicle driving license was the main or contributory cause for the accident. The insurance company has failed to prove that the driver was disqualified or incapacitated to drive heavy goods vehicle at the relevant point of time and the insured was guilty of negligence and failed to exercise reasonable care. In view of aforesaid discussion this issue is decided in favour of the owner and against the insurance company.

4. We have perused the certificate issued by the D.T.O. and the driving licence annexed by the appellant with the memo of appeal.

5. From perusal of the driving licence, it appears that driving licence was obtained as far back as in the year 1988. It was time to time renewed and there has been endorsement for driving heavy motor vehicle also. Although certificate of D.T.O. was filed by the appellant but it was not proved by examining the author of the certificate or any of the officers of the Transport Department.

6. Admittedly, driver of the dumper was holding a driving licence and there appears to have been made endorsement by the D.T.O for driving heavy vehicles also.

7. In absence of any conclusive and strong evidence from the side of the Insurance Company, it cannot be held that the driver was not qualified to drive the heavy vehicle.

8. We are therefore, of the opinion, that there is no material to differ with the finding recorded by the tribunal on the aforesaid issue.

For the reasons aforesaid, we do not find any merit in this appeal which is accordingly dismissed.