(1999) 09 P&H CK 0149

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3189 of 1996, Civil Miscellaneous No. 13604-CII of 1996, 1284-CII and 9772-CII of 1999

National Insurance Company — APPELLANT

Vs

Zana Begum and Others — RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:
Central Motor Vehicles Rules, 1989 — Rule 3(1)
Motor Vehicles Act, 1988 — Section 149

Citation : (2000) ACJ 1339 : (2000) 124 PLR 2 : (2000) 1 RCR(Civil) 134

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; Kulvir Narwal, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—Respondents No. 1 to 9 had filed M.A.C. petition No.49 of 28.4.1994 before the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the "Tribunal"). Claim of Rs. 2,30,400/- was awarded to respondents No. 1 to 9. Being aggrieved by the said award, the insurance company has come in appeal before this court.

2. I have heard learned counsel for the appellant and the respondent-claimants. The counsel for the appellant argued that the driver of the vehicle was not having a valid driving licence and, therefore, the insurance company cannot be saddled with the liability to indemnify the owner of the vehicle. It is an admitted fact that the driver was having a learner''s licence; The arguments of the learned counsel for the appellant is that the driver was not accompanied by a person having effective driving licence as an instructor and, therefore, the insurance company was not liable. He has referred to the clause in the policy of insurance Ex.R-5. It reads as under:-

"Any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective learner''s licence may also drive the vehicle and such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.

3. Basing his argument on this clause of insurance policy, the learned counsel for the appellant has argued that there is a breach of this clause because the requirement of Rule 3 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules) was not complied with. The relevant Rule 3(b) of the Rules reads as under:-

"3. GeneraL-

(a) xx xx xx xx (b) Such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) xx xx xx xx."

4. The learned counsel for the appellant has referred to the deposition of Gulam Ra-sool, PW2. He is a person who is said to have lodged the F.I.R. of the accident. According to this witness, the driver of the car hit Gulab Rasool Khan who was badly injured and the driver escaped after the incident. Neither in examination-in-chief nor in cross-examination, any question has been asked to him regarding the driver being not accompanied in the car by a person holding a valid driving licence. Learned counsel for the appellant has referred to the written statement filed before the Tribunal. He has read over to me the preliminary objection No.3 in the written statement. It reads as under: -

"That the respondent No. 1 at the time of alleged accident was not holding a valid driving licence. Therefore, the petition is liable to be dismissed. The other documents of the alleged vehicle i.e. Maruti Car at the time of alleged accident were not valid. Therefore, the petition is liable to be dismissed."

5. After reading this part of the written statement, learned counsel for the appellant argued that the necessary contention has been taken in the written statement. However, the specific argument, which the learned counsel for the appellant is making, does not find place in the above paragraph. Moreover, on reading the judgment of the Tribunal, it appears that this point was not raised before the Tribunal during the arguments.

6. Learned counsel for the appellant argued that burden of proving that the driver was holding a valid driving licence is on the respondents and also .argued that it was their duty to bring in evidence to show that the driver was accompanied by a person holding a valid driving licence. However, regarding burden of proof, the contentions of the learned counsel for the appellant cannot be accepted in view of the principles laid down by the Supreme Court in the case, of Narcinva v. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors.1985 A.C.J. 397. There is no hint given at any stage by the appellant either in the written statement filed before the Tribunal or the cross-examination that this was the

defence which the appellant wanted to take.

7. Learned counsel for the appellant has cited before me the case of New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, . It has been held therein by the Supreme Court that a learner having a learners licence would not be regarded as duly licensed as per clause in the insurance policy. The clause in the insurance policy in that case was as under:-

"Provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner''s licence) and is not disqualified from holding such a licence."

8. It is, therefore, obvious that the clause in the insurance policy in the case of Mandar Madhav Tambe (supra) was different from the clause in the insurance policy in the present case. In the former case, the driving by a person holding learner''s licence was completely excluded while it is not so in the present case. The distinction is apparent from the clauses in the insurance policies in both these cases. Therefore, the judgment of Mandar Madhav Tambe (supra) does not help the appellant in any way.

9. In addition to the above observations made earlier in this judgment regarding discharge of burden of proof and the defence taken by the appellant, it may also be noted that there is no evidence coming forth to show that the driver of the car was prosecuted for breach of rule 3(b) of the Rules. This also is the circumstance which can be considered as an evidence for holding that there was no breach of Rule 3(b) of the Rules. To say in different words had there been any breach, the driver would certainly have been prosecuted, and that evidence could have been brought by the insurance company and no such evidence has been shown to/me from the record.

10. Because of the above reasons, there appears to be no ground to disturb the award against the appellant.

11. As a result, this appeal is without merit and is dismissed.