
(2020) 07 SHI CK 0396

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 396, 393, 394, 395, 397 Of 2017, First Appeal Order No. 166, 230 Of 2017, Civil Original No. 69 Of 2017

National Insurance Company Limited

APPELLANT

Vs

Bhagat Ram And Another

RESPONDENT

Date of Decision : 02-07-2020

Acts Referred:

Citation : (2020) 07 SHI CK 0396

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Jagdish Thakur, Aman Sood, Nitin Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Since all these petitions and appeals arise out of awards passed by Motor Accident Claims Tribunal below qua same accident, same were tagged together and are being disposed of vide this common judgment. However, for the sake of clarity, facts of lead case i.e. CMPMO No. 396 of 2017 are being discussed herein below.

2. On 5.2.2013, at 3.30 PM, vehicle bearing registration No. HP - 01C-0865 met with an accident near Narola, Police Station Chowari, Tehsil Bhattiyat, District Chamba, Himachal Pradesh, in which its occupants sustained injuries, resulting into filing of as many as seven claim petitions seeking different amounts as compensation. Motor Accident Claims Tribunal-II, Chamba, Himachal Pradesh, while allowing the claim petitions filed by the claimants, held the claimants entitled to different sums, vide Awards dated 29.12.2016. Since in some of the claims, compensation awarded was below Rs.20,000/-, Insurance Company filed petitions under Art. 227 of the Constitution of India and in other cases, appeals under S.173 of the Motor Vehicles Act were filed. Above petitions and appeals came to be tagged and heard together.

3. Respondent No.2-Bhan Singh, who is driver-cum-owner of the ill-fated vehicle in question has contested the claim of the claimants before learned Tribunal below by stating that the accident occurred on account of heavy rain and mud on the road, as a consequence of which, retaining wall collapsed and vehicle skidded off the road. It is claimed by respondent No.2 that since the accident has not occurred on account of his rash and negligent driving, he is not liable to pay any compensation.

4. Insurance Company, which has approached this Court by way of above said petitions and appeals, has opposed the claim of the claimants on the ground that the driver of the vehicle was not having a valid and effective driving licence to drive the vehicle in question at the relevant time and vehicle was being plied in violation of provisions of Motor Vehicles Act and in violation of the terms of the insurance policy. Insurance company also claimed that the offending vehicle did not have a valid Registration Certificate, route permit and fitness certificate to ply the vehicle at the relevant time.

5. Learned Tribunal below, while concluding that since the vehicle in question was duly insured with the insurance company, held it liable to indemnify the claimants, hence, the instant petitions and appeals by the insurance company.

6. Primarily the insurance company has raised a ground in all these matters that since it stood proved on record that respondent No.2, who is owner-cum-driver of the vehicle in question, was not possessing a valid and effective driving licence., learned Tribunal below ought not have held insurance company liable to indemnify the insured.

7. Mr. Jagdish Thakur, learned counsel for the insurance company, while referring to FIR (Ext. PW-1/A) contended that in the case at hand, learned Tribunal below has fallen in grave error while taking into consideration driving licence placed on record by respondent No.1. Mr. Thakur argued that as per FIR, Ext. PW-1/A, driving licence issued by Licensing Authority, Jalandhar was made available to the investigating agency immediately after the accident, by respondent No.1 but since the insurance company was able to prove by leading cogent and convincing evidence that said driving licence issued by Licensing Authority, Jalandhar Ext. RF is fake, learned Tribunal below, wrongly permitted respondent No.1 to place on record another driving licence Ext. R1/F allegedly issued by District Transport Officer, Mon, Nagaland, which is also fake.

8. Mr. Nitin Thakur, Advocate, while appearing for respondent No.2/Bhan Singh, argued that no doubt, driving licence Ext. RF allegedly issued by Licensing Authority, Jalandhar was proved to be fake but since respondent No.2 was able to prove on record by leading cogent and convincing evidence that driving licence, Ext. R1/F was issued by District Transport Officer, Mon, Nagaland on 26.5.2010, which was valid at the time of alleged accident, learned Tribunal below rightly decided the issue with regard to driving licence against the insurance company. Mr. Nitin Thakur, further contended that no steps, if any,

ever came to be taken at the behest of the insurance company to prove that the driving licence, Ext. R1/F issued by District Transport Officer, Mon, Nagaland is fake, as such, learned Tribunal below rightly held that respondent No.2 was having a valid and effective driving licence at the time of alleged accident.

9. Mr. Aman Sood, Advocate, while appearing for claimants, contended that since factum with regard to accident and injuries suffered by the claimants stands duly established on record, claimants are entitled to compensation, which may be paid by insurance company or respondent No. 2 being owner-cum-driver of the vehicle in question.

10. Since the issue involved in all the cases is/was same i.e. with regard to correctness and genuineness of driving licence, Ext. R1/F, this Court, while hearing all the cases together, with the consent of parties, deemed it necessary to call for report of District Transport Officer, Mon, Nagaland with regard to driving licence allegedly issued by it, vide order dated 1.1.2020, in the following terms:

"Registry of this Court is directed to make reference to the District Transport Officer, Mon, Nagaland "whether Driving licence Ex. R-1/F has been issued by it in favour of Sh. Bhan Singh son of Sh. Chain Singh, R/o VPO Baag, Tehsil Bhattiyat, District Chamba, H.P. on 26.5.2010 or not?". While sending aforesaid reference, Registry may also annex copy of Driving Licence Ex. R-1/F available at page No.99 of the record of MACT No. 509 of 2013. Aforesaid authority may be directed /requested to answer the aforesaid reference expeditiously, preferably within a period of two weeks from the receipt of the reference. Immediately after receipt of response to the reference sent by this Court, matter be listed before this Court.

List on 16.3.2020."

11. In response to the aforesaid reference, District Transport Officer, Mon, Nagaland sent report, which is reproduced herein below:

"With reference to the subject cited above, and vide your letter No. HHC/Judl/ CMPMO No. 396/2017, dated 24/01/2020-2351, I have the honour to inform you that the above mentioned driving licence in the name of Shri, Bhan Singh is not issued from this office. Hence, no record is found to furnish for your references."

12. Though, aforesaid report submitted by District Transport Officer, Mon, Nagaland reveals that the driving licence, Ext. R1/F placed on record by respondent No.2 was never issued by it but the next question which arises for consideration is, whether relying upon aforesaid report, can this Court proceed to hold that the insurance company is not liable to indemnify the insured.

13. Admittedly, in the case at hand, immediately after the alleged accident, respondent No.2 had furnished copy of driving licence allegedly issued in his favour by the Licensing Authority, Jalandhar, to the Police, which subsequently came to be tendered in evidence by the insurance company as Ext. RF. Record

reveals that the insurance company successfully proved on record by leading cogent and convincing evidence that the aforesaid driving licence Ext. RF was never issued by Licensing Authority, Jalandhar. However, the record reveals that in the case at hand, learned counsel for the respondent No.2 tendered in evidence driving licence, Ext. R1/F, allegedly issued by District Transport Officer, Mon, Nagaland. Since the insurance company failed to prove that the licence Ext. R1/F tendered in evidence is fake, learned Tribunal below returned the finding that at the time of alleged accident, respondent No.2, who was driver of the vehicle, was possessing a valid licence. Whether learned Tribunal below could have permitted the respondent No.2 to tender in evidence second driving licence, Ext. R1/F especially when immediately after the accident, said respondent himself had made available licence Ext. RF allegedly issued in his favour by Licensing Authority, Jalandhar to the police, which was ultimately proved to be fake, is another question, which needs to be answered. But having taken note of the fact that respondent No.2 never entered into witness box and counsel representing him in court was permitted by learned Tribunal below to tender in evidence, driving licence, Ext. R1/F allegedly issued by District Transport Officer, Mon, this Court deems it not necessary to go into aforesaid question in the instant proceedings. Needless to say, mere tendering of a document in evidence is not sufficient to prove its validity, rather, document tendered in evidence is required to be proved in accordance with law unless same is per se admissible in law or same is admitted by the opposite party.

14. Interestingly, in the case at hand, respondent No.2 in whose favour driving licence Ext. R1/F was allegedly issued by District Transport Officer, Mon, Nagaland, never entered in witness box and as such, it cannot be said that Ext. R1/F driving licence issued by District Transport Officer, Mon, Nagaland was proved in accordance with law by respondent No.2. There is nothing on record to suggest that such document was ever admitted by the insurance company or the same is per se admissible in law. To the contrary, this Court finds from the record that Ext. RF, licence issued by Licensing Authority, Jalandhar, was proved to be fake by the insurance company by leading evidence.

15. Though report of District Transport Officer, Mon, Nagaland as received by this Court in reply to reference sent by the Registry of this Court to it, clearly suggests that Ext. R1/F was not issued by it, but since opportunity never came to be afforded to either of the parties to prove or rebut the aforesaid document, by way of leading cogent and convincing evidence, this Court sees no reason to give its findings on the same at this juncture, merely on the basis of the report submitted by District Transport Officer, Mon, Nagaland. But since driving licence Ext. R1/F was allowed to be tendered in evidence by learned Tribunal below, without its being proved in accordance with law, this Court deems it fit to remand the case back to learned Tribunal below, to decide issue of validity of driving licence, Ext. R1/F afresh, after affording opportunity to lead evidence to the respective parties. Though, this Court is aware of the fact that wholesale remand is not permissible but, in the peculiar facts and circumstances of the case, as

have been taken note above, this Court finds it necessary to remand the case back to learned Tribunal below to decide the same afresh. Since there is no dispute qua other aspects of the matter, learned Tribunal below shall only permit parties to lead evidence with regard to validity of the driving licence, Ext. R1/F, allegedly issued by District Transport Officer, Mon, Nagaland, and thereafter matter shall be decided afresh in the totality of the evidence available on record.

16. All the petitions/appeals stand disposed of in the aforesaid terms alongwith all pending applications. Learned counsel for the parties undertake to appear before learned Tribunal below on 13.7.2020, enabling it to proceed further with the matter. Needless to say, due opportunity to prove /rebut the driving licence in question shall be granted to all the parties. Record of the case is sent back forthwith.