(2014) 01 SHI CK 0046

In the High Court Of Himachal Pradesh

Case No : FAO No. 455 of 2012-C

National Insurance Company Limited — APPELLANT

Vs

Moti Ram and Others — RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : (2014) 01 SHI CK 0046

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Lalit K. Sharma, Advocates for the Appellant; Pawan Gautam, Advocates for the Respondent

Judgement

Sanjay Karol, J.—The only issue raised in the present appeal, assailing award dated 29.8.2012, passed by Motor Accident Claims Tribunal (I), Kangra at Dharamshala (H.P.)., in M.A.C.P. No. 4-J/II-2006, titled as Moti Ram versus M/s. Sharma Bus Service Pvt. Ltd. and others, is about the validity of driving licence of driver Suresh Kumar.

2. After appreciating the material so placed on record by the parties, and more so statement of the owner, Tribunal decided issue No. 3 in the following terms:-

"10. In pursuant to the directions issued to this Tribunal, by the Hon''ble High Court, wherein, this Tribunal was directed to permit the insurance company, to, produce evidence of the DTO/Licensing Authority Amritsar, to, establish the fact, whether the renewal of licence of respondent Suresh, comprised, in Ex. RW-2/C was or was not fake, the insurer has proceeded to lead into the witness box, an official from concerned DTO as RW-3. His testimony was recorded on 5.7.2012. In his examination in chief, he, has deposed that Ex. RW-1/B contains the signatures of the, then clerk Madam Balraj Kaur. He has proceeded to depose, that, licence Ex. RW-3/C was, not, issued from the office of DTO Amritsar, nor the same was renewed by said office. The aforesaid witness led into witness box, by, the insurer of the offending vehicle, has, in his cross-examination, admitted the fact, that, Ex. RW-2/C bears the stamp of DTO. Though Ex. RW-3/C also, bears the signatures of the purported competent, as well, as, authorized officer, enjoined by law to issue driving licenses, yet, RW-3 has been unable to identify the signatures of the aforesaid, nor has the insurance company, adduced evidence on record, that, the signatures borne on Ex. RW-3/C, was, not of the purported competent officer, authorized by law to issue licence, or that, if, they were his, then he was not competent, to, issue driving licence under his signatures. In other words, an omission on the part of insurer of offending vehicle, to, falsify the signatures of the purported authority, as existing in Ex. RW-3/C enjoined by law, to, signature driving licence, or omission to adduce such evidence that in case of such signatures being genuine, then, the signatory having to authority to issue driving licence under his signatures, a conclusion, cannot, be, hence, formed that Ex. RW-3/C, is, a, fake driving licence, merely on the score of it, not, having come to be entered, in, the relevant and apposite register, maintained by the officials of DTO Amritsar. In case, there was omission of evidence, in, above regard and in which eventuality, an, inference of its being, hence, not an authentic driving licence, is, to be formed, then, the mere omission on the part of concerned official of DTO Amritsar, to record, an, entry in the apposite register, obviously, would not render it to be fake or unauthentic, as, the act of it being recorded, in, the apposite register, by, the concerned official is, merely a ministerial act, for, which omission, the holder thereof, ought not to suffer. Even, it, cannot be said, that, the act of omission of recording of an entry, of, Ex. RW-3/C, in, the, apposite register by concerned ministerial staff, renders, Ex. RW-3/C to have not come to be processed or issued, by the DTO Amritsar, especially, when Ex. RW-3/C for reasons, aforesaid, cannot, be concluded to be either not processed nor issued, by, the DTO Amritsar, except for its being recorded, in, the apposite register, which omission has been construed, to, be a ministerial lapse, and does not sustain, a, conclusion that, it, either not processed or not issued, by, the DTO Amritsar. In view of the above discussion, issue No. 3 is decided against insurance company."

3. To assail such findings, Dr. Lalit, learned counsel for the appellant refers to and relies upon the decision rendered by the Apex Court in National Insurance Co. Ltd. Vs. Geeta Bhat and Others, . The ratio of law laid down therein, is inapplicable to the instant facts. In fact, the matter is squarely covered by the recent decision rendered by the Apex Court in Pepsu Road Transport Corporation Vs. National Insurance Company, wherein it is held that:-

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is Qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation".

(Emphasis supplied)

4. The accident took place on 1st August 2005. Driver Suresh Kumar was driving bus No. HP-22-5985. Owner, through special power of attorney, i.e. son clarified that prior to engagement of the driver, authenticity/validity of the driving licence was got verified from the competent authority. There is no cross-examination to this effect. Competence and capacity of the driver is not in dispute.

5. In the light of aforesaid decision, I see no reason to differ with the findings returned by the Tribunal.

6. For all the aforesaid reasons, there is no merit in the present appeal, as such, the same is dismissed.

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7. Learned counsel for the non-applicant has no objection for release of the amount, as such, application is allowed and amount falling to the share of the applicant, alongwith up-to-date interest, is directed to be released in his favour. The amount be remitted directly into the bank account as per particulars mentioned in the application. Application stands disposed of.