
(2016) 04 SHI CK 0199
In the High Court Of Himachal Pradesh
Case No : FAO No. 141 of 2010

National Insurance Company Limited	Vs	APPELLANT
Shri Jai Chand		RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 2(10), 2(21), 2(35), 2(47)

Citation : (2016) ILRHP 763

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Ms. Shashi Kiran, Advocate vice Mr. Rupinder Singh, Advocate, for the Respondent No. 1; Mr. Naveen Bhardwaj, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—This appeal is directed against the award, dated 4th January, 2010, made by the Motor Accident Claims Tribunal, Kullu, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 58/2007, titled Shri Jai Chand v. Hari Ram & others, whereby compensation to the tune of Rs. 1,36,614/- with interest @ 7.5% per annum from the date of the filing of the claim petition till its realization, came to be awarded in favour of the claimant-respondent No. 1, herein and the insurer-appellant herein, was saddled with liability (for short, the "impugned award").

2. The claimant, owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The insurer has questioned the impugned award on the following two counts:

"1. The driver was not having the valid and effective driving licence at the time of accident;

2. The amount of compensation is excessive.

4. Admittedly, the driver was driving Mahindra Pick up bearing registration No. HP-34B-0745, the gross weight of which is 2820 kilograms, as per the Registration Certificate, Ext. RW-1/A, is a light motor vehicle.

5. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle", as contained in Sections 2 (10), 2 (21), 2(35) and 2 (47), respectively of the Act, herein:

"2.

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.

xxx xxx xxx

(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 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

6. Section 2 (21) of the Act provides that a "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. Section 2 (35) of the Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2 (47) of the Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

7. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & ors., being LPA No. 180 of 2002, decided on 27th September, 2007, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above-mentioned vehicles, could he drive a passenger vehicle? The

answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. v. Irfan Sidiq Bhat, 2004 (II) SLJ 623, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorisation of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:-

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorisation in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

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17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C" to "E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

8. Admittedly, the driver was having driving licence to drive "light motor vehicle". This Court has held in so many cases, FAO No. 538 of 2007, titled as Oriental Insurance Company Ltd. v. Sh. Khem Chand & others, decided on 27.02.2015, being one of them, that the driver who was having licence to drive "light motor vehicle", requires no "PSV" endorsement.

9. The Tribunal has rightly made discussion in para 28 of the impugned award, while returning findings on Issue No. 3, needs no interference.

10. Now, coming to the question of adequacy of compensation, the insurer has no right to question the same. However, I have gone through the entire record. The amount of compensation is meager, but the claimant has not questioned the same.

11. Accordingly, the impugned award is upheld and the appeal is disposed of.

12. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing the same in their accounts.

13. Send down the records after placing a copy of the judgment on the Tribunal's file.