(2008) 08 SHI CK 0032

In the High Court Of Himachal Pradesh

National Insurance Company Limited APPELLANT

Vs

Smt. Chimna Devi and Others RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 14

Citation : (2010) ACJ 1854 : (2008) 2 ShimLC 394

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.

CMPs (M) No. 637 and 638 of 2008 in FAO No. 387 of 2005

1. Both these applications are allowed as prayed for as I am satisfied that delay in filing the application for bringing on record the legal representatives is bona fide. CMPs (M) No. 639 and 640 of 2008 in FAO No. 389 of 2005

2. Both these applications are allowed as prayed for, as I am satisfied that delay in filing the application for bringing on record the legal representatives is bona fide.

CMP No. 470 of 2005 in FAO 215 of 2005

3. Heard. This application has become infructuous in view of the fact that appellant has been allowed to raise the point that accident had occurred after the driving licence of the driver had expired. This very fact is sought to be proved in evidence. To prove this, no additional evidence is required.

FAOs No. 215, 387, 388, 389, 390, 391 of 2005

4. All these appeals are being disposed of by a common judgment as they arise out of the same award. The point raised for determination of this Court is that the driver Satish Kumar was issued a driving licence by the Registering and

Licensing Authority, Kalpa at Reckongpeo for light transport vehicle on 22.6.1999 which was renewed upto 7.1.2004. On the date of accident i.e. 14.1.2004, his driving licence had expired. This question need not be gone into any further. The proviso to Section 14 of the Motor Vehicle Act, 1988 states:

Every driving licence shall, notwithstanding its expiry under this subsection, continue to be effective for a period of thirty days from such expiry.

5. It is, thus, clear that on the day of accident the driver was possessed of a valid driving licence. (See Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, . In Oriental Insurance Company Limited v. Kali 2005 (2) Civil C C High Court of Kerala, held:

The only contention urged by the appellant/insurer in this appeal is that it shall be allowed to recover the amount paid to the claimant as the driver did not have a valid driving licence as on the date of accident viz., 28.3.1995. Ext.B2 is the licence particulars. It shows that the driving licence issued to the 6th respondent had expired on 14.3.1995.

2. Going by the proviso to Section 14 of the Motor Vehicles Act, 1988 "every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

3. Thus, as on the date of accident as mentioned above, the said one month period had not run out. The licence was, notwithstanding its expiry, effective as on the date of accident. Necessarily, the contention of the insurer cannot be accepted.

Appeal fails, dismissed.

6. Learned Counsel appearing for appellant submits that the learned trial Court was wrong in awarding compensation for the passengers as the policy did not cover their liability and it was Act only policy. This argument cannot be accepted as I find from the judgment of the learned Motor Accident Claims Tribunal that this point was never urged, raised, pleaded or proved, nor parties were put to trial on this issue. This objection is deemed to have been abandoned since it was not raised nor any issue claimed by the appellant before the learned Motor Accident Claims Tribunal inviting a finding thereon. The appellant was aware about its case and never pleaded it, cannot be now allowed to take it up in appeal and resort to a complete re-trial of the case.

7. Another contention which has been raised by learned Counsel for the appellants in FAOs No. 387 and 389 of 2005 and 390 of 2005 and 391 of 2005 is that the compensation assessed is excessive and is not in accordance with law. The record shows that no permission u/s 170 of Motor Vehicles Act was given to Insurance Company. In these circumstances, the appellant cannot be allowed to urge this point.

8. All these appeals are accordingly dismissed. There shall be no order as to

costs. The cross objections also shall stand dismissed as the assessment made by the learned Motor Accident Claims Tribunal is just and appropriate. All pending applications shall stand disposed of, accordingly.

9. All these appeals are accordingly disposed of. There shall be no order as to costs.

