
(2005) 08 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 255 of 1998

New India Assurance Co.

APPELLANT

Vs

Smt. Savitri and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2005) 4 ACC 755 : (2006) 1 ShimLC 31

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Advocate : K.D. Sood and Sunita Sharma, for the Appellant; G.D. Verma and Romesh Verma, for the Respondent

Final Decision : Allowed

Judgement

Surjit Singh, J.—Appellant, New India Assurance Company is aggrieved by the award dated 27.12.1997 of the Motor Accident Claims Tribunal, Shimla, whereby, it (the appellant) has been ordered to pay the amount of compensation awarded in favour of respondent No. 1, in its capacity as insurer of the vehicle.

2. A Marutivan, registered as taxi, was owned by respondent Kamlesh Kumar. He had insured himself for third party risk due to use of the vehicle with the appellant. The van met with an accident on 9.7.1994, in which one Hirdu Ram died. His parents, i.e. respondent Smt. Savitri (the mother) and late Atma Ram (the father) filed a petition, u/s 166 of the Motor Vehicles Act, for award of the compensation. It was alleged that the accident had taken place due to the rash or negligent driving of the van by its driver, namely respondent Sanjay Kumar. The owner and the driver of the vehicle denied that the cause of the accident was rash or negligent driving of the vehicle. The present appellant took the plea that respondent Sanjay Kumar did not possess a valid and effective driving licence.

3. The Tribunal after taking the evidence of all the parties, awarded a sum of Rs. 1,69,000/- by way of compensation together with interest. The appellant's plea

that the driver did not possess a valid and effective licence was rejected, and consequently, it was ordered that it (the appellant) in its capacity as insurer of the vehicle is liable to pay the compensation money.

4. The only point that was urged by the appellant is that the licence of respondent Sanjay Kumar did not have an endorsement authorizing him to drive a "public service vehicle" or a "transport vehicle" and hence he was not authorized to drive the vehicle, in question, which was registered as taxi and was, therefore, a public service vehicle and hence a transport vehicle also.

5. It is the admitted case of both the parties that the licence authorized the respondent Sanjay Kumar to drive only a light motor vehicle, as originally issued, and that an endorsement, authorizing him to drive a transport vehicle, was made on it on 17.4.1995, that is to say after the occurrence of the accident. The fact is proved by RW 4 Smt. Lalita, a Clerk in the office of Licencing Authority (Rural) Shimla and also the writing Ex. RW 4/A made by Licencing Authority, Shimla on the reverse of an application submitted to it by a Surveyor, appointed by the appellant. The said writing has also been proved by RW 4 Smt. Lalita. Now the question arises whether a person authorized to drive a light motor vehicle can drive a transport vehicle, without there being a specific authorization in that behalf.

6. A similar question was raised before a Division Bench of this Court in *New India Assurance Company Ltd. v. Suraj Parkash and Ors.* 2000 (2) Shim. L.C. 262. There also the vehicle involved was a Maruti van, which was registered as a taxi. The driver, it appears, possessed a licence to drive light motor vehicle and it did not have the endorsement authorizing him to drive a transport vehicle. The Division Bench held that the driver was not authorized to drive the van registered as taxi and hence the Insurance Company was not liable. In the present case also the vehicle involved is a Maruti van registered as taxi and respondent Sanjay Kumar possessed a licence to drive only a light motor vehicle. The licence did not have any endorsement authorizing the holder to drive a light motor transport vehicle on the date on which the accident took place, though such an endorsement has been made on the licence, after the occurrence of the accident. A reference was made to the Full Bench of this Court for re-consideration of the aforesaid judgment of the Division Bench. The Hon'ble Full Bench, vide judgment dated 21.4.2004 in FAO No. 74 of 1998 alongwith several other matters, answered the question posed to it, but did not express any view or make any comments on the aforesaid judgment of the Division Bench, and therefore, the said judgment still holds the field.

7. In view of the above stated position, the appeal is allowed and the award of the Tribunal to the extent it holds the appellant liable to pay the compensation money is set-aside. However, following the precedent of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, it is ordered that the appellant shall first pay the entire compensation money to the claimant/respondent Smt. Savitri and thereafter it shall be entitled to recover the same

from the insured-owner of the vehicle, i.e. respondent No. 2 Kamlesh Kumar.