
(1996) 12 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : C.M.P. (M) No"s. 529 and 530 of 1993

New India Assurance Co. Ltd.

APPELLANT

Vs

Jagtar Singh and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (1998) ACJ 1074

Hon'ble Judges : M. Srinivasan, C.J

Bench : Single Bench

Advocate : Ravi Bakshi, for the Appellant; Bhupinder Gupta, Praneet Gupta, Ramakant Sharma and Devyani Kuthiala, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—These petitions are under Article 227 of the Constitution of India. Though originally Section 115 of CPC was also quoted, on an objection by the office, counsel agreed to delete that provision and confined the petition to Article 227 of the Constitution of India. It is submitted that as the compensation awarded is below Rs. 10,000/-, no appeal is maintainable and consequently the correctness of the award could be challenged under Article 227 of the Constitution of India. Hence, these revision petitions are taken up for hearing.

2. These petitions are filed by the insurance company which disputes its liability to pay compensation on the ground that the person who was driving the vehicle involved in the accident was one who did not have a driving licence to drive a vehicle. According to the insurance company it was only the cleaner of the truck who was driving the vehicle at the relevant time who did not possess a driving licence even according to his own statement and therefore the insurance company is not liable to pay any part of the compensation. For this purpose reliance is placed upon the statement of Devi Singh who was examined as RW 1. No doubt he has stated that he was not possessing driving licence at the time of

accident but he has clearly stated that the person who drove the vehicle at the relevant time was Harpal Singh, driver, son of Mast Ram. According to Devi Singh, RW 1, after the accident the driver left the truck and went to inform the truck owner about the same after requesting the witness to stay at the place of accident. It is also stated by him very clearly that the key of the engine of the truck had been taken away by the driver. Nothing has been elicited in the cross-examination to dispute that statement. In such circumstances, the statement of Devi Singh that he did not possess driving licence at the time of accident will not help the petitioner herein.

3. Reliance is also placed on the F.I.R. and the challan of the police to show that Devi Singh was the driver at the relevant time. Neither the F.I.R. nor the challan is admissible in evidence and the same could not be looked into. On the other hand, the evidence on record in the present case is very clear to the effect that the vehicle was driven not by Devi Singh but by a regular driver of the vehicle.

4. Nirmal Singh, RW 2, is the owner of the vehicle. He has stated categorically that at the time of the accident it was only his driver who was driving the vehicle and he has also added that he had authorised only Harpal Singh to drive the truck and no one else. According to him, Harpal Singh had a valid driving licence and he had been his driver for four years. PW 2 has stated in the chief-examination that himself, Ramesh Chand and Jagtar Singh, owner of another truck bearing No. 5065, were going on the road when the accident took place. According to him, Rakesh Chand, deceased sustained serious injuries and died. He was driver of truck owned by PW 2 bearing registration No. HNE 365. PW 2 also received simple injuries. He has stated in the chief-examination that they had caught the driver at the time of accident when he was sitting at the steering. He stated as follows:

...We caught hold of the driver of the truck HYE 1913 who was sitting on the steering. The police also reached at the spot. Police took Devi Singh to Police Station, Parwanoo.

5. Learned counsel for the petitioner wants this Court to make an inference that the person who was caught by the witness and another was the same as Devi Singh who was taken to the police station. No such inference can be drawn. It is very significant that the witness does not mention the name of the driver when he has stated that he himself and another person caught hold of the driver and again when he referred to Devi Singh he did not say that Devi Singh was the driver of the truck.

6. No doubt in another place the witness has stated that accident took place due to negligence of Devi Singh, driver of truck No. HYE 1913 but this statement has been completely washed away by the statement made in the cross-examination which has been elicited by the petitioner itself. In the cross-examination of the insurance company the witness has stated very categorically that:

...It is incorrect to suggest that we had caught the driver at the time of accident

when he was at the steering. I do not remember the name of the driver who is driving the vehicle after the accident.

This statement has been brought out by insurance company itself in the cross-examination. PW 4 has stated as follows:

A man was sitting inside the truck who was under the influence of liquor. I do not know whether he was a driver or conductor/cleaner. I can recognize him." (The witness pointed out towards Devi Singh respondent standing in Court today).

This statement will not prove that it was Devi Singh who was driving the vehicle at the time of accident. Thus the evidence on record is hardly sufficient to accept the case of the petitioner insurance company that the vehicle was being driven by Devi Singh who was the cleaner of the vehicle, who had no driving licence at the time of accident. On the facts it is very clear that the vehicle was driven only by Harpal Singh who had a valid driving licence.

7. Learned counsel for the respondents has brought to my notice the judgment of the Supreme Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, The Supreme Court has clearly held that if the owner of the vehicle had authorised the vehicle to be driven by a duly licensed driver but the driver allowed the cleaner/conductor having no driving licence, the insurance company cannot escape the liability so far as third parties are concerned on the ground of contravention of condition in the policy. The Court referred to the judgment in Skandia Insurance Co. Ltd. v. Kokilaben Chandravan 1987 ACJ 411 and a passage from that judgment is extracted which reads as follows:

If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under Sub-section (1) of Section 96. In the present case, far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From

the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurubachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accidents Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well-known.

8. The Court referred to the judgment in *Kashiram Yadav v. Oriental Fire & Genl. Ins. Co. Ltd.* 1989 ACJ 1078 , wherein the statement of law laid down in the above case was reiterated and the Court added:

We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of condition in the certificate of insurance.

The Court expressed its agreement with the above views.

9. In this case as a fact it has been found that it was only a duly licensed driver who was driving the vehicle. As a matter of law the Supreme Court has held that even if the driver had authorised somebody else to drive the vehicle without the permission of owner, the insurance company will still be liable. Hence, there is no merit in these petitions and the same are dismissed. There will be no order as to costs.

10. The objection raised by the respondents in each case by filing C.M.P. Nos. 105 and 106 of 1996 that the main petitions should be dismissed in limine in view of the provisions of Section 173 of the Motor Vehicles Act is not sustainable. C.M.Ps. have to be dismissed in so far as they prayed for dismissal of the main petitions on preliminary objections. However, the prayer in the C.M.Ps. that the amount may be ordered to be released to the claimants-respondents-applicants is granted. In view of the dismissal of the main C.M.Ps. the claimants are entitled to get their amounts of compensation as per the award. The Registry may pay the amount by cheque to the counsel for claimants appearing in these cases.