
(2013) 11 DEL CK 0367
In the Delhi High Court
Case No : MAC. APP. 269 of 2011

New India Assurance Co. Ltd.

APPELLANT

Vs

Kamini and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8

Citation : (2013) 11 DEL CK 0367

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Monika, for Mr. S.N. Parashar, for R1 to R6, Mr. Dinesh Kothari and Mr. B.S. Randhava for R7 and R9, Ms. Noopur Singhal, for Mr. Rakesh Khatana, for R8 and R10, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.

MAC. APP. 269/2011

1. Present appeal has been preferred against the impugned award dated 19.01.2011, whereby Id. Tribunal has awarded compensation for a sum of Rs. 5,82,556/- along with interest @ 8% per annum from the date of filing of the petition till the date of realization. Vide this appeal, appellant is seeking exoneration from any liability and alternatively seeking recovery right against the owner and driver of the offending vehicle.

2. On this issue, Id. Tribunal has recorded in the impugned order as under:

Now coming to the next aspect as to who is liable to pay the compensation to the petitioners. Basically both the offending vehicles are insured with the same insurance company, i.e., respondent no. 2 and 4. The court has already held that the accident has been caused due to the rash and negligent driving of the drivers of both the offending vehicles against whom the charge sheet has been filed.

Therefore, respondent nos. 5 and 6, respondent no. 1 and 3 and the insurance company i.e. respondent no. 2 and 4 all are jointly and severally liable to pay the compensation to the petitioners. However, since the vehicles which have been proved as offending vehicles were duly insured with respondent no. 2 and 4, the liability of respondent no. 2 and 4 would be primary. Accordingly, respondent no. 2 and 4 are directed to pay 50% each of the amount of compensation to the petitioners.

Ld. Counsel for the respondent no. 2 and 4 have argued that in this matter the vehicle, i.e., offending vehicle no. 1 was a goods carrying vehicle with gross weight of 16200 KG, which comes in the category of HTV and as per the report of the investigator the above said vehicles comes in the category of heavy weight vehicle, but the driving licence of the driver respondent no. 5 has been got verified and it has been found that the driving licence issued in favour of the respondent no. 5 is for LTV and not for HTV and the insurance company has even served a notice under order 12 rule 8 CPC, thereby asking the respondent no. 1 and 5, i.e., owner and driver of the offending vehicle no. 2 to produce the permit and driving licence, but they have not appeared and therefore, recovery rights to the extent of payment to be made by the respondent no. 2 be granted in favour of the insurance company. However, Id. counsel for petitioner on the other hand has argued that there is no ground to grant recovery rights in favour of the insurance company as the fact that the vehicle was HTV or the fact that the accident has happened only because of the offending vehicle no. 2 was HTV has not been proved and since nothing has been proved on record either with respect to the investigator's report or about the driving licence and even the investigator has not been examined by the respondent no. 2 and as such the contention of Id. counsel for respondent no. 2 has no force.

I have heard the arguments and perused the record. The contention of Id. counsel for petitioner appear to be well found that respondent no. 2 and 4 have examined the Administrative Officer (Legal) only. Even the investigator who has investigated the records with respect to the driving licence or vehicle being heavy or light has not been examined. Even it has not come in the evidence as to how and against what proper receipt the investigator has conducted the investigation. The respondent no. 5 himself has moved an application before the Transport Office, Ludhiana and has got investigation done with respect to his licence being valid. No evidence has been brought on record by respondent no. 2 and 4 to prove that the vehicle used by the respondent no. 5 was HTV. Therefore, the court is of the opinion that respondent no. 2 is not entitled for having recovery rights against respondent no. 1 and 5. It is ordered that respondent no. 2 and 4 will pay 50% amount of compensation each to the petitioners and no recovery rights are granted in favour of respondent no. 2.

3. During the pendency of the appeal, respondent no. 10, moved an application being CM. No. 16383/2012 with prayer as under:

a) Allow the applicant/respondent no. 10 to place on record verification report of

HTV Driving Licence of applicant/respondent no. 10 in compliance of order dated 10.03.2012.

4. It is pertinent to mention here that verification of the driving licence is also filed as Annexure-A, which is as under:

To

The District Transport Officer,

Sangrur,

Sub:-Verification of Driving Licence.

Sir,

I beg to state my Driving Licence No. 55 dated 04.02.1998 to 03.02.2001 for LMV only and further endorsed for Transport Vehicle Vide no. 1990 dated 23.07.1999 and Renew No. 1775 dated 13.03.2001 to 02.02.2004 and renew/108 dated 19.04.2005 to 18.04.2008 in the Name of Lakhwinder Singh S/o Manjit Singh R/o Village Sehke Tehsil Malerkotla District Sangrur.

It is therefore, requested that the requisite verification of Driving Licence be made from your office record and oblige.

Thanking you,

Yours faithfully.

Lakhwinder Singh, S/o Mannjit Singh

R/o Village Sehke Tehsil Malerkotla

District Sangrur

Returned in original with remarks that Driving Licence No. 55 dated 04.02.1998 to 03.02.2001 for LMV only and further endorsed for Transport Vehicle vide No. 1990 Dated 23.07.1999 & Renew No. 1775 Dated 13.03.2001 to 02.02.2004 and further renewed vide no. 108 dated 19.04.2005 to 18.04.2008, in the name of Lakhwinder Singh S/o, Manjit Singh R/o, Village Sehke Tehsil Malerkotla, District Sangrur. This licence was issued by this office.

5. Vide order dated 18.09.2012, appellant/insurance company was directed to verify the same and file the report on record. However, despite repeated opportunities, appellant/insurance company failed to verify the said report.

6. Ld. Counsel appearing on behalf of the appellant submits that he has communicated with the appellant number of times, but there is no response from their side.

7. It is pertinent to note that no verification report has been filed by the appellant. Therefore, wilful breach in terms of policy has not been proved.

8. Keeping in view the aforesaid aspect, I am of the considered opinion that the Id. Tribunal has rightly not granted any recovery right in favour of the appellant.

9. Finding no merit in the instant appeal, same is accordingly dismissed.

10. Vide order dated 03.06.2011, 50% of the award amount was directed to be released in favour of the respondents/claimants. Therefore, balance compensation amount be released in favour of the respondents/claimants in terms of order dated 19.01.2011 passed by the Id. Tribunal. Statutory amount be released in favour of the appellant.

CM. NOs. 16383/2012 & 5008/2012

In view of above, instant applications have become infructuous and dismissed as such.

CM. No. 2795/2013 & CM. No. 2796/2013

1. Vide the instant applications, applicant/claimant has filed cross-objection to the instant appeal.

2. Registry is directed to register the same as an independent appeal and notify on 26.03.2014.

3. Memo of parties attached with the application is taken on record.

4. CMs disposed of.