
(2017) 08 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : 637 of 2016

New India Assurance Company Limited.

APPELLANT

Vs

Ram Lal and others.

RESPONDENT

Date of Decision : 23-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#),
[Order 26 Rule 4](#) - Saving of Inherent
powers of Court

Citation : (2017) 08 SHI CK 0018

Hon'ble Judges : Tarlok Singh Chauhan

Bench : Single Bench

Advocate : Raman Sethi, Y.P. Sood, Gaurav Gautam

Judgement

1. Looking to the nature of the order I propose to pass in this appeal, it is really not necessary to delve into the facts in details. Suffice it to say that respondent No.1 is the claimant, who filed a claim petition before the learned Motor Accident Claims Tribunal (for short Tribunal) on the allegations that he while returning to his house on foot, a truck bearing registration No. HP-12C-9871 being driven by respondent No.2 in a rash and negligent manner hit him, on account whereof he sustained injuries.

2. In the claim petition so filed, one of the issues framed therein was with regard to the question "whether the driver of the truck/offending vehicle was not holding valid and effective licence to drive the vehicle?" The onus of this issue was placed upon the driver. This issue appears to have been decided under issue No.5, which reads as under: "29. Respondent No.3 has examined Hem Raj Computer Operator, SDM Office Nalagarh, H.P. but he proves that vehicle No.HP12C-9871 was having fitness certificate and copy of fitness certificate is Ex.RW1/A. Its passing was valid from 15.2.2011 to 14.2.2012. The date of event is 22.6.2011.

30. The owner has further deposed that he kept respondent No.1 as driver and

his deposition reveals that he also saw the driving license and also drove the vehicle properly. He got his driving license verified also. He produced a report Ex.R2/A. The insurance company has submitted that it is a verification which cannot be accepted. In cross-examination by the insurance company he says that he cannot produce the original license, and maintained that it is in the court file. He says that at the time when he employed respondent No.1 in the year 2010, he did not verify the licence. According to him he has obtained the verification report Ex.RW1/A from Jalpaiguri of his own. He says that this verification was taken qua Satpal. There is no cross-examination by the insurance company that he as owner did not see the driving licence. The insurance company has brought on record documents Ex.R2 i.e. an observation sent by some person though not examined that the driving licence was not issued by the authority concerned and is fake.

31. There is copy of driving licence mark A of Satpal respondent No.1. The report of Investigator as filed by insurance company (Ex.R2) reads : I have filed an application before the Registering/Licensing Authority, Jalpaiguri for granting certified true copy D/L No.WS-71/85248/11 in the name of Satpal, son of Lal Chand of Kartapur, Anandpur Salub, Salugra, Jalpaiguri. After searching they have reported me that there is no such record in the office in connection with DL No. WD-71/85248/11 in the name of Satpal son of Lal Chand of Kartarpur, Anandpur Salub, Salugara, Jalpaiguri. (I annexed here with the report of Registering/Licensing Authority, Jalpaiguri). Thus, insurance company has come forward with the verification report that said licence has not been issued by the issuing authority.

32. Keeping in view the legal position in National Insurance Company Limited versus Swaran Singh 2004 (3) SCC 297, and the evidence in the present case, what is established by the owner by his deposition is that he saw the driving licence of the driver thus employed him. The insurer has failed to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver. Consequently, insurance company cannot avoid its liability. The insurance company has itself tendered insurance policy Ex.RX which was from 4.3.2011 to 3. 3.2012 which is valid during the period. Thus, the insurance company has to indemnify the owner. Issue answered accordingly.

3. It was then that issue No.4 was separately decided vide para 33 of the award in the following manner: "33. In view of discussion on issue No.5, even if there are contradictory reports regarding the driving licence i.e. one produced by the owner as Ex.R2/A and another produced by insurance company, based on the evidence on record, the insurance company has failed to prove that insured has committed breach. Thus, insurance company cannot avoid the liability. Issue answered against respondent No.3."

4. Evidently the Learned Tribunal has held that since the insurer, i.e. appellant had failed to prove that the insured was guilty of negligence and failed to

exercise reasonable care in fulfilling the condition of policy regarding use of vehicle by duly licensed driver, therefore, it was liable to indemnify the award.

5. I have gone through the records and find that the said finding is perverse and cannot, therefore, be sustained.

6. A perusal of the record would show that the licence of the driver, which was produced by the owner, is found as mark "A" (page 163) and admittedly is a photocopy. It would also be noticed that the appellant-company has produced on record reports with regard to driving licence and in some of which the licence has reportedly been found to be fake. While on the other hand, the owner has also produced one certificate, which in fact had been relied upon by the Tribunal, which does indicate that the licence in question has been issued by the competent authority. Such documents are found from pages 165 to 177 of the record.

7. The records further reveal that the appellant had taken adequate steps to summon the Licensing Clerk from the office of RLA, Jalpaiguri (West Bengal) from where the licence was alleged to have been issued. The appellant filed process fee for the said purpose on 12.6.2013, 19.8.2013, 28.9.2013, 15.10.2014 and 29.4.2013.

8. That apart, the appellant thereafter had filed an application for issuance of Commission for examining of the Licensing Clerk, Licensing Authority, Jalpaiguri (West Bengal) on interrogatories under order 26 rule 4 read with section 151 of the Code of Civil Procedure and the interrogatory was as under: "Whether driving licence No. DL. No.WB-71/85248/11 dated 15.3.2011 valid upto 14.3.2014 issued in the name of Sat Pal son of Lal Chand resident of Kartarpur Anandpur Sahib Ropar, TA Salugwra Jalpai Guri, if so what is its valid (Photo copy of DL is attached.)"

9. Notably, this application was though allowed vide order dated 18.2.2015 and the Licensing Clerk was directed to be examined by serving interrogatory upon the said witness through the Motor Accident Claims Tribunal, Jalpaiguri, West Bengal, however, it appears that the MACT, Jalpaiguri did not execute this order even though repeated reminders (three in numbers) were issued to the said authority. However, strangely enough, learned Tribunal vide its order dated 20.2.2016 closed the evidence of the respondent by observing as under: "As sequel to the previous order passed by this court, the evidence of the respondents is closed by the order of the Court."

10. Learned Tribunal below while closing the evidence did not care to go through the letter sent to it by the learned District Judge, Jalpaiguri asking him to send the letter to the District Magistrate, who according to him, was the proper authority to record the evidence. It is apposite to reproduce this letter in its entirety and the same reads thus:

"From: District Judge

Jalpaiguri

To: The Motor Accident Claim Tribunal-III Una District, Himachal Pradesh

Dated Jalpaiguri the 29th day of January, 2016

Sir,

With reference to your letter No./MACT/III/Una/2016-153 dated 5.1.2016 in MACP No.57/13/12 titled as Rampal Vs Sat Pal next dated 20.2.2016.

He is requested to please send the letter to the District Magistrate Proper Authority, Jalpaiguri to record the evidence of claim petition u/s. 166 of M.V. Act. This for your information.

Sd/-

District Judge

Jalpaiguri"

11. From the sequence of events as noticed above, it is absolutely clear that there was no occasion for the Tribunal to have closed the evidence of the appellant particularly when it had taken adequate steps, which were within its reach to lead evidence and if at all the evidence was not forthcoming the fault clearly was that of the office of Tribunal and not of the appellant.

12. In this view of the matter, I have no option but to remand the case to the learned Tribunal to render fresh finding on issue No.4 after affording appellant adequate and proper opportunity to lead its evidence. The findings of the Tribunal shall be confined only to this issue whereas the findings on the other issues shall not be disturbed.

13. The appeal is accordingly allowed. The parties, through their counsel, are directed to appear before the Tribunal below on 11.9.2017. Cross-Objections No. 13/2017

14. By medium of these cross-objections, the claimants have sought enhancement in the amount of compensation. However, as the award itself has been set aside though only on issue No.4, therefore, these cross-objections for the time being have rendered infructuous and dismissed as such. However, this will not prevent the claimant from filing fresh cross-objections or separate appeal after the fresh award is passed by the Tribunal in compliance to the aforesaid directions.