

(2012) 03 AHC CK 0127
In the Allahabad High Court

New India Assurance Company Ltd.

APPELLANT

Vs

Manvir Singh and Others

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Citation : (2012) 03 AHC CK 0127

Hon'ble Judges : Sunil Ambwani, J and Pankaj Naqvi, J

Final Decision : Disposed Of

Judgement

Sunil Ambwani & Pankaj Naqvi, J.—We have heard Shri P.K. Sinha, learned counsel for the appellant.

2. This first appeal from order arises out of Motor Accident Claim No.72 of 2007 filed by Manvir Singh son of Karan Singh aged 40 years at the time of accident, for compensation for 100% disability in both his legs, which were badly crushed in an accident at 4.15 p.m. with bus no.HP 392242 alleged to be rashly and negligently driven by the driver. Smt. Urmila Devi is the owner of the vehicle, which was insured on the relevant date by the New India Assurance Company Ltd., Ghaziabad, the appellant.

3. The Tribunal recorded the findings that the driver had valid driving licesnse. The owner of the vehicle could not produce the permit and thus the conditions of the policy was violated.

4. On issue no.1 relating to the accident on account of rash and negligent driving, the police officer, who investigated the crime was produced as DW1 and Shri Jagvir Singh, the brother of the injured was produced as PW2. He deposed that at about 4.00 p.m. on 18.11.2006, when he was coming from the fields along with his brother, the bus no.HP392242 came from Pahasu. The bus was being rashly and negligently driven. The bus hit the petitioner's brother, on which he was badly injured. A first information report was lodged on 23.11.2006 registering crime under Section 279, 337, 338 IPC. On this evidence the Tribunal concluded that the bus was being rashly and negligently driven and injuries were

received by the injured person on account of the accident.

5. The application of the insurance company to contest the proceedings was allowed. The Tribunal held that the claimant was badly injured. An amount of Rs.35,223/ was spent on his treatment in Ram Chandra Hospital, Aligarh. Both of his legs were amputated by which he has become permanently disabled. He was 40 years of old and earning a sum of Rs.4500/ per month by selling of milk, milked from the buffaloes owned by him. The report of Dr. K.K. Singh was relied upon to prove the severity of accident, crushing of the legs and the amputation. The Tribunal calculated the injuries to the extent of loss of earning to 80%, and applying multiplier of 15 in Schedule II on estimated income of Rs.100/ per day; Rs.36,000/ per year, calculated the compensation of Rs.4,67,223/. A total amount of Rs.4,67,500/ was thus awarded, with 6% interest from the date of application. The Tribunal directed the amount awarded to be paid by the Insurance Company, to be recovered from the owner of the vehicle.

6. Shri P.K. Sinha appearing for the insurance company submits that the judgment in *Sardari & Ors. v. Sushil Kumar & Ors.*, 2008 (2) T.A.C. 369 (SC) providing in para 6 that although in terms of a contract of insurance, which is in the realm of private law domain, having regard to the object for which Sections 147 and 149 of the Act had been enacted, the social justice doctrine as envisaged in the preamble of the Constitution of India has been given due importance. The Act, however, itself provides for the cases where the Insurance Company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions of contract of insurance. Where the breach of conditions of contract is exfacie apparent from the records, the Court will not fasten the liability on the Insurance Company. In certain situations, however, the Court while fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants the awarded amount with liberty to it to recover the same from the owner.

7. So far as the renewal of the driving license is concerned, it is submitted by Shri P.K. Sinha that the Tribunal could not have directed the insurance company to pay the entire amount and recover from the owner of the vehicle as the driver did not have valid license on 16.11.2006, when the accident took place. The Form 24 produced by the Insurance Company shows that the license was valid from 29.5.2002 to 28.5.2005 and thereafter from 21.11.2006 to 20.11.2009.

8. It is not denied that the license was renewed on 21.11.2006 and thus in view of *Ishwar Chandra & Ors. v. The Oriental Insurance Co. Ltd. & Ors.*, 2007 (2) T.A.C. 108, the renewal under Section 15 (1) of the M.V. Act would relate back to the date, when the license had expired provided the application for renewal was made within 30 days. In this case there was no evidence to show that the application was not made within 30 days, nor any such statement was brought on record by the Insurance Company. So far as valid permit is concerned, the finding that the valid permit on the date of accident was not produced on record, cannot be taken to mean that there was no valid permit. The finding is regarding

production of permit in evidence, and not that the petitioner did not have valid permit on the date of accident. If the insurance company wanted to avoid the liability, it could have produced the evidence of the fact that there was no valid permit in the same manner, it had collected the evidence in respect of validity of the driving license.

9. In the circumstances, the appellant cannot draw any benefit from the judgment of the Madras High Court in *Divisional Manager, New India Assurance Co. Ltd. Dindigul v. Chandran & Anr.*, 2010 (1) T.A.C. 765 (Mad.), in which the Madras High Court expressed a difference of opinion on the facts of the case to allow the benefit as given in *Sardari & Ors.* (Supra). The Madras High Court appears to be adventurous in drawing distinction from the judgment in *Sardari & Ors.* (Supra), in which the principle of compensation to victims in accident was laid down on the doctrine of social justice envisaged in the preamble of the Constitution of India. The Madras High Court appears to have taken a narrow and pedantic approach without taking into consideration that the Insurance Company are not in business purely for profits. They are also discharging a social obligation, based on the law of torts. The contract of insurance, should not be seen in such a manner that any violation of the terms of contract would become a ground to avoid the liability under a contract, deviating from the object of providing for insurance of motor vehicles.

10. In the present case we do not find that finding of rash and negligent driving, the accident and 100% disability on the ground of both legs on account of accident suffers from any error of appreciation of fact and law. We also do not find the award of compensation on the facts in which the claimant lost his both legs and has been made permanently disabled for all his life is excessive or is in violation of the method of calculation provided in the Motor Vehicle Act.

11. The first appeal from order is dismissed. Under the interim order half of the amount was directed to be kept in a national bank of the choice of the applicant in an interest bearing account. Since we have dismissed the appeal, the conditions given in the interim order dated 26.8.2010 are discharged. The claimant respondent will be entitled for release of the entire amount to be spent by him in the manner in which he needs to settle himself.