(2009) 07 P&H CK 0223

In the Punjab And Haryana At Chandigarh

New India Assurance Company Ltd. APPELLANT

Vs

Narender Singh and Others RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2009) 156 PLR 691

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—In this revision petition filed under Article 227 of the Constitution of India, the petitioner has sought modification of the order dated 15.5.1996 (Annexure P-l) passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as "the Tribunal") to the extent that the petitioner-Company be absolved of the liability to pay the compensation as the driver of the offending vehicle was not having a valid driving licence at the time of accident.

2. Briefly stated, the facts of the case are that on 5.5.1993, after attending a marriage, respondent Nal herein and his father were returning from village Mujessar to village Gaunchhi in a car bearing registration No. DAV-6453. Respondent No. 1 was sitting on the wheels whereas his father was on the rear seat of the said car and when they reached near the turning of Sector-23, at T-Point Sohna Road in Sector-23, a truck bearing registration No. HRC-5651 being driven rashly and negligently by respondent No. 2 at a fast speed came from opposite side at about 10.30 PM and caused accident with the car. As a result of the said accident, respondent No. 1 herein received multiple injuries and was taken to Escorts Medical Hospital. FIR, Ex.Pl was lodged in that regard. Respondent No. l-claimant filed a claim petition against the driver, owner and insurer of the offending truck claiming a sum of Rs. 2,00,000/- as compensation.

3. The said claim petition was contested by the petitioner and respondents No. 2 and 3 herein and it was pleaded that the accident had not taken place. The Insurance Company pleaded that the driver of the offending vehicle was not holding a valid driving licence at the time of accident. However, later on, respondents No. 2 and 3, herein were proceeded against ex parte by the Tribunal vide order dated 22.11.1994.

4. The Tribunal vide order dated 13.3.1995, framed the following issues:

1. Whether the petitioner received injuries in a road accident which took place on 5.5.1993 near Sohna turning T-point within the jurisdiction of PS Mujessar due to rash and negligent driving on the part of respondent No. 1-driver of truck No. HRC-5651 owned by respondent No. 2, as alleged? OPP

2. Whether the alleged offending vehicle was not being driven by a person holding a valid driving licence and if so, to what effect? OPR-3

3. Whether the petitioner is entitled to an award of compensation and if so, for how much amount and against whom? OPP

4. Relief.

5. The Tribunal on the basis of evidence led by the claimant as well as the Insurance Company decided issue No. 1 in favour of the claimant holding that truck No. HRC-5651 was being driven rashly and negligently by its driver and it caused accident with the car of the claimant resulting into injuries to him. Issue No. 2 was decided against the Insurance Company holding that the driver of the offending vehicle was holding a valid driving licence on the date of accident. Under issue No. 3, the claimant was held entitled to a sum of Rs. 7000/- as compensation on account of injuries received by him. Accordingly, the Tribunal vide award dated 15.5.1996 awarded a sum of Rs. 7000/- as compensation to the claimant for the injuries received by him in a vehicular accident. The amount of compensation was held to be payable by the driver, owner and insurer of the offending vehicle jointly and severally. Hence, the present revision by the insurer for modification of the award dated 15.5.1996.

6. Learned Counsel for the petitioner relied upon the judgments of the Hon''ble Apex Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and United India Insurance Co. Ltd. Vs. Davinder Singh, to contend that when the original driving licence was fake, the subsequent renewal thereof would not absolve the owner from the liability to pay the compensation to the claimant and the Insurance Company cannot be held liable. According to the learned Counsel, the finding of the Tribunal on issue No. 2 is legally unsustainable and the Tribunal was in error in not granting recovery rights to the Insurance Company to recover the amount from the owner and driver of the vehicle.

7. I have heard the learned Counsel for the petitioner and have perused the record with his assistance.

8. I find force in the argument raised by the learned Counsel for the petitioner. The issue regarding liability of an insurer in case of a fake driving licence having been renewed u/s 15 of the Motor Vehicles Act (in short "the Act") came up for consideration before the Hon''ble Supreme Court in Kamla''s case (supra). The Apex Court concluded that a licence which is fake at the time of its issuance originally cannot attain validity in case the same is subsequently renewed under the provisions of the Act. The observations of the Apex Court in para 12 of the judgment which are relevant, read thus:

12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry." No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

9. Kamla''s case (supra) was followed by the Apex Court in Laxmi Narain Dhut''s case (supra), wherein while considering the provisions of Sections 147 and 149 of the Act, it was concluded in para 38 as under:

38. In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh case has no application to cases other than third-party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third-party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

10. The aforesaid view of the Apex Court was reiterated in Davinder Singh''s case (supra).

11. In view of the above, the irresistible conclusion is that where a driver is holding a fake driving licence, the forgery in obtaining it cannot be cured by getting the same renewed u/s 15 of the Act subsequently. Once a forgery, the licence is null and void and it cannot attain any legitimacy and get the colour of genuineness by renewal under the Act. The necessary corollary would be that under such circumstances where driver is holding a driving licence which was result of forgery, the Insurance Company cannot be held liable to indemnify the

insured. However, in such a situation, the primary liability shall remain that of the driver and the owner of the vehicle. The insurer shall be liable to clear the claim of the claimant with liberty to recover the same from the owner and driver of the vehicle.

12. In view of the above, the present revision petition is allowed and the award passed by the Tribunal is modified to the extent that the petitioner-Insurance Company shall be at liberty to recover the amount of compensation payable to the claimants from the owner and driver of the vehicle. No costs.

