
(2008) 12 AHC CK 0009
In the Allahabad High Court
Case No : F.A.F.O. No. 3579 of 2008

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Poonam Kesarwani and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 150, 150(1), 150(2)
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 74, 77
Motor Vehicles Act, 1988 — Section 158(6), 160, 166, 170, 173
Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 221

Citation : (2009) 2 AWC 1083

Hon'ble Judges : V.M. Sahai, J; Ran Vijay Singh, J

Bench : Division Bench

Advocate : V.K. Birla, for the Appellant; Ashok Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai and Ran Vijai Singh, JJ.—This first appeal from order is directed against the award passed by the Motor Accident Claims Tribunal awarding compensation of Rs. 11,83,556 alongwith 6% interest by award dated 31.7.2008. The facts in brief are that on 18.8.2004 at about 11 a.m., Truck No. MP-17C/5217 hit the Scooter No. UP-53/3663 from behind. In the accident Sri Jauhari Lal Kesarwani was seriously injured and he died due to injuries received in the accident. He was working as Accountant in District Urban Development Authority (D.U.D.A.), Allahabad and drawing monthly salary of Rs. 11,289. The claimants being widow, children and father of the deceased, filed M.A.C.P. No. 583 of 2004 u/s 166 of the Motor Vehicles Act, 1988 (in brief the Act) claiming Rs. 20 lacs compensation alongwith interest. The claim petition was contested by the Appellant on the ground that though the offending Truck No. MP-17C/5217 was insured by the Appellant but the driver was not having a valid driving licence. The Appellant filed an application u/s 170 of the Act. It was rejected by

the Tribunal on 2.9.2006. The Tribunal recorded the finding that the accident took place due to rash and negligent driving of the driver of Truck No. MP-17C/5217. Further, the vehicle was insured by the Appellant and the driver of the vehicle had a valid driving licence.

2. We have heard Sri V. K. Birla, learned Counsel for the Appellant and Sri A. K. Singh, learned Counsel appearing for the Respondents. Learned Counsel for the Appellant has urged that at the time of the accident, the driver was not having a valid driving licence as per the certificate issued by the Regional Transport Officer, Raipur (Chhattisgarh). He urged that it was proved that the driving licence No. S-7118-R.P.R.-96 was not issued in the name of driver Sant Lal Soni. He relied on the letter/certificate issued by Regional Transport Officer dated 20.4.2005. The learned Counsel submitted that the letter/certificate was issued after deposit of fee as required under Rule 150 (2) of the Rules, therefore, the letter/certificate is a public document and in view of Sections 74 to 77 of the Indian Evidence Act, 1872 (in brief the Evidence Act) it required no proof. He further urged that since the driving licence filed before the Tribunal was fake and the truck being driven by an unlicensed driver in breach of insurance policy, the Appellant would not be liable to pay compensation. He lastly, urged that the Appellant could challenge in this appeal the order of the Tribunal rejecting the application u/s 170 of the Act. Learned Counsel for the Respondents has supported the award of the Tribunal.

3. The questions that arise for consideration in this appeal are whether the letter/certificate issued by Regional Transport Officer, Raipur (Chhattisgarh) can be considered to be a public document as defined in Section 74 of the Indian Evidence Act, 1872, which required no proof or it was required to be proved by the person producing it before the Tribunal by examining witnesses ; whether under Rule 150 (2) of the Central Motor Vehicles Rules, 1989 insurance company can also receive information in Form 54 ; whether in appeal u/s 173(1) an order passed u/s 170 of the Motor Vehicles Act, 1988 can be challenged?

4. Any person having right to inspect a public document can u/s 76 of the Evidence Act obtain certified copy of such document. A certified copy of a public document is admissible without further proof u/s 77 of the Evidence Act. The Evidence Act as such does not apply to the Motor Vehicles Act, 1988. But it is well-settled that any Tribunal which follows its own procedure applies principles of Evidence Act. The Act has made provisions for issuance of information regarding a motor vehicle involved in the accident by the registering authority. Section 160 of the Act reads as under:

160. Duty to furnish particulars of vehicle involved in accident.-A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed

fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

From a reading of Section 160, it is clear that information can be sought from the registering authority by a person who is entitled to claim compensation or insurer of the motor vehicle on payment of prescribed fee. In other words, such information which is with the registering authority shall be furnished to the claimant or the insurance company.

5. The Central Government in exercise of its powers under the Act has made "The Central Motor Vehicles Rules, 1989" (in brief the Rules). Rule 150 provides for furnishing of copies of reports to Claims Tribunal. Rule 150 is extracted below:

150. Furnishing of copies of reports to Claim Tribunal.-(1) The police report referred to in Sub-section (6) of Section 158 shall be in Form 54.

(2) A registering authority or a police officer who is required to furnish the required information to the person eligible to claim compensation u/s 160, shall furnish the information in Form 54, within seven days from the date of receipt of the request and on payment of a fee of rupees ten.

Rule 150 (2) provides that the registering authority is obliged to furnish the required information to the person eligible to claim compensation u/s 160 of the Act and the information shall be furnished in Form 54. Rule 150 (2) of the Rules does not mention that information in Form 54 shall also be furnished to the insurance company. The information can be sought by the claimants either from the police authority or the registering authority in Form 54 which is reproduced below :

Form 54

See Rule 150(1) and(2)

Accident Information Report

1. Name of the police station ...
2. C.R. No. /Traffic accident report ...
3. Date, time and place of the accident ...
4. Name and full address of the injured/deceased ...
5. Name of the Hospital to which he/she was removed ...
6. Registration number of vehicle and the type of the vehicle
7. Driving licence particulars:

- (a) Name and address of the driver
- (b) Driving licence number and
- (c) Address of the issuing authority
- (d) Badge No. in case of public service vehicle
- 8. Name and address of the owner of the vehicle at the time of the accident
- 9. Name and address of the insurance company with whom the vehicle was insured and the particulars of the Divisional Officer or the said insurance company
- 10. Number of insurance policy/ insurance certificate and the date of validity of the insurance policy/ insurance certificate
- 11. Registration particular of the vehicle (class of vehicle)
 - (a) Registration No. ...
 - (b) Engine number or motor number in the case of Battery operated Vehicles. ...
 - (c) Chesis No. ...
- 12. Route permit particulars ...
- 13. Action taken, if any, and the result thereof
- 6. A driving licence is issued under Chapter II of the Act. Section 26 of the Act mandates the State Government to maintain a register known as State Register of Driving Licence. Similar provision is contained in Rule 23 of the Rules. Section 26(1) of the Act is extracted below:

26 (1) Each State Government shall maintain, in such form as may be prescribed by the Central Government, a register to be known as the State Register of Driving Licences, in respect of driving licences issued and renewed by the licensing authorities of the State Government, containing the following particulars, namely:

 - (a) names and addresses of holders of driving licences ;
 - (b) licence numbers ;
 - (c) dates of issue or renewal of licences ;
 - (d) dates of expiry of licences ;
 - (e) classes and types of vehicles authorised to be driven ; and (f) such other particulars as the Central Government may prescribe.
- 7. The Act in Section 2(37) defines "registering authority." It means an authority empowered to register motor vehicles under Chapter IV and u/s 2(20) "licensing authority" means an authority empowered to issue licences under Chapter II or,

as the case may be, Chapter III. The question is whether the registering authority would include the licensing authority within the ambit of Section 160 and Rule 150 (2). The intention of the Legislature gathered from Section 160 appears to be that the information has to be furnished to the claimant, to enable him to make a proper claim for compensation. Similarly, information is to be furnished to the insurer, to defend the claim petition. The information is required to be furnished to ensure fair play, so that genuine claim petitions may not be defeated for lack of information and the fraudulent claim petitions may not succeed. Form 54 at item No. 7 mentions that information has to be furnished about the driving licence particulars, namely, name and address of the driver, driving licence number and date of expiry, address of the issuing authority, badge number in case of public service vehicle. Section 26(1)(c) lays down that date of renewal and (e) provides that classes and types of vehicles authorised to be driven are also to be recorded in the State Register of Driving Licence. We are of the opinion that item No. 7 of Form 54 is only illustrative and is not exhaustive. Information can also be obtained in Form 54 about the authorisation of the driver to drive a particular classes and types of vehicle, dates of renewal, and endorsements on the licence. The information about the particulars of licence can only be furnished by the licensing authority. No difficulty would arise where the power of registering authority and the licensing authority are exercised by the same officer. However, where the power of registering authority and the licensing authority are exercised by the different officers, then in such cases, in our opinion, the registering authority has to be read in Sections 160 and 150(2) to include the licensing authority, otherwise the intention of the Legislature to furnish any information on payment of the prescribed fee would be frustrated.

8. Though Rule 150 (2) mentions that information can be sought by the claimant, but it does not debar the insurance company from seeking the information. u/s 160 of Act, information can be sought by the claimant as well as by the insurer. We are of the opinion that Rule 150 and Section 160 of the Act should harmoniously be construed to advance the intention of the Legislature and the rule making authority. Information under Rule 150 (2) that can be furnished to the claimant in Form 54 by the registering authority or by the police authority on deposit of requisite fee shall also be provided to the insurance company.

9. The question is whether the letter/certificate issued by Regional Transport Officer, Raipur (Chhattisgarh) can be considered to be a public document as defined in Section 74 of the Indian Evidence Act, 1872, which required no proof or it was required to be proved by the person producing it before the Tribunal by examining witnesses? A public document is a document that is made for the purpose of the public making use of it. When a public officer is under a duty to make some entries in the official book or register, the entries made therein are admissible in evidence to prove the truth of the facts entered in the official book or register. The entries are evidence of the particular facts which was the duty of

the officer to record. The law reposes confidence in the public officer entrusted with public duties and the law presumes that public officers will discharge their duties with responsibility. A driving licence is issued under Chapter II of the Act. Section 26 of the Act makes it mandatory for the State Government to maintain a register known as State Register of Driving Licence. The entries with regard to issuance or renewal of driving licence by the licensing authorities which contains particulars of licence and the licence holder are entered by the Regional Transport Officer/the licensing authority in discharge of their official duty enjoined by law. The State Register of Driving Licence is record of the acts of public officers. The State Register of Driving Licence is a public record. It can be inspected by any person. We are of the considered opinion that the State Register of Driving Licence is a public document as defined by Section 74 of the Evidence Act.

10. Section 76 of the Evidence Act gives the right to obtain a certified copy of a public document which any person has a right to inspect on payment of fee. A certified copy of the entries made in the public record is required to be issued on payment of fee in Form 54 as laid down by Rule 150 (2). Form 54 being a certified copy of a public document, namely, the State Register of Driving Licence, need not be proved by examining a witness. Once a certified copy of the entries made in the register maintained u/s 26(1) read with Rule 23 is issued in Form 54 it is admissible in evidence u/s 77 of the Evidence Act, and no further proof of Form 54 by oral evidence by examining witnesses is required.

11. In the case in hand the information has not been furnished by the registering authority in Form 54. It had been provided in the following manner which is extracted below:

Sri M. Ibrahim

Ins. Investigator Raipur (C.G.)

S-7118-R.P.R.-96 Shri Sant Lal Soni

The aforesaid information is in the form of a letter written to the investigator appointed by the insurance company. It cannot be deemed to be a certificate or certified copy in Form 54 of the Rules. Deposit of fee would not convert the letter into a certificate under Rule 150. Therefore, the aforesaid letter issued by Regional Transport Officer, Raipur (Chhattisgarh) was required to be proved by the insurance company before the Tribunal by oral evidence by examining witnesses. The insurance company had failed to lead any evidence to prove the aforesaid letter by examining witnesses before the Tribunal. The Tribunal rightly refused to place reliance on the letter dated 20.4.2005.

12. The learned Counsel for the Appellant has urged that the application filed by the insurance company before the Tribunal on 19.7.2008 was illegally rejected. The application filed by the Appellant under Order XII, Rule 2 of the CPC to the effect that the claimant and the owner of the vehicle may be directed to either

admit or deny the letter dated 20.4.2005 was rightly rejected by the Tribunal on 19.7.2008 as the burden of proof was on the insurance company to prove that the driving licence of the driver of the offending truck was fake but the insurance company failed to discharge its burden. There is yet another to uphold the order of the Tribunal dated 19.7.2008. Under Rule 221 of the Uttar Pradesh Motor Vehicles Rules, 1998 only some of the provisions of the CPC had been applied to the summary proceedings before the Motor Accident Claims Tribunal. The provisions of Order XII, Rule 2 having not been made applicable to the proceedings before the Tribunal, the application filed by the insurance company was not maintainable.

13. The learned Counsel for the Appellant has lastly urged that the application filed by the Appellant u/s 170 of the Act had illegally been rejected on 2.9.2006 by the Tribunal and the Appellant is also challenging this order in the appeal. We have examined the relief claimed in this appeal but we do not find that order dated 2.9.2006 had been challenged by the Appellant. After the application u/s 170 was rejected it was open to the Appellant to challenge the order under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. But the order dated 2.9.2006 cannot be challenged in an appeal, as an appeal u/s 173(1) of the Act lies only against the award of the Motor Accident Claims Tribunal and the order u/s 170 not being an award, no appeal would be maintainable against such an order.

14. For the aforesaid reasons, we do not find any merit in this appeal. The appeal fails and is accordingly dismissed.

15. The amount of Rs. 25,000 deposited by the Appellant in this Court u/s 173 of the Motor Vehicles Act, 1988 shall be remitted by the Registry to the Motor Accident Claims Tribunal, Allahabad within one month and shall be included in the amount to be paid by the Appellant to the claimants-Respondents No. 1 to 4.