
(2011) 01 AHC CK 0234

In the Allahabad High Court

Case No : First Appeal from order No. 179 of 2010

Oriental Insurance Comp. Ltd. thorough its Senior Divisional	APPELLANT
Vs	
Mangare and Others	RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 9
Motor Vehicles Act, 1988 — Section 10(2), 14, 173, 2, 3

Citation : (2011) 8 RCR(Civil) 3041 : (2011) 4 TAC 229

Hon'ble Judges : Virendra Kumar Dixit, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Mukund Tewari, for the Appellant; S.M. Royekwar, Satya Narayan Yadav and Shobha Ram Pandey, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant and Sri S.M. Royekwar, learned Counsel for the Respondent No. 3.
2. Present appeal u/s 173 of the Motor Vehicle Act has been preferred against the award dated 05.11.2009 passed by the Motor Accident Claims Tribunal/ Additional District Judge, Lucknow in Claim Case No. 274 of 2007.
3. The deceased Saligram alias Shallu after purchasing some food on 29.09.2007 was returning from Kukar Bhukwa (Arya Nagar) to resident on cycle at 11.30 a.m. When he reached near Sisai Maphi Nigoh corner of the road and border of police station Kharagpur District Bahraich, a tanker bearing Registration No. U.P.40/C-9825 coming from reverse direction hit and crashed with Sri Saligram alias Shallu and in consequence thereof he succumbed to injuries at the spot. At the time of death the deceased Saligram alias Shallu was aged about 14 years and was a student of Class VI. The father of the deceased and mother filed a claim petition for compensation to the extent of Rs. 5,00,000/-, The tribunal framed required issues and also with regard to driving licence from the evidence laid by the parties. The tribunal arrived to the conclusion that the accident was

caused because of rash and negligent driving of the tanker. The driver was having valid driving licence to ply heavy Vehicle, hence the claimant was entitled for compensation. The tribunal awarded compensation to the extent of Rs. 1,55,000/-.

4. While assailing the impugned award, solitary argument advanced by the learned Counsel for the Appellant is that the driver of the tanker was not having valid driving licence to ply hazardous vehicle.

5. Learned Counsel for the Appellant has relied upon the judgment of Hon''ble the Supreme Court in the case of New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another,

6. On the other hand, learned Counsel for the Respondents has relied upon the Division Bench judgment of this Court in the case of The New India Assurance Com Ltd. v. Sharavan Kumar Shukla and 3 Ors. reported in 2009(27)LCD 1330.

7. In the case of New India Assurance Co. Ltd. (supra) relied upon by the learned Counsel for the Appellant in which their lordships of Hon''ble Supreme Court held that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The lordship has noted the various category of the driving licence provided under Rule for convenience in para 14 of the judgment as under:

In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , this Court opined:

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a

"maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of 9 accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

8. In the present case admittedly the driver was having driving licence to ply heavy vehicle. Accordingly the tribunal recorded finding that the drivers was possessing requisite licence to ply to the vehicle. While filing the written statement no such plea has been raised by the Appellant before the tribunal that there is some category like hazardous vehicle under rule for which specific driving licence with requisite entry shall require to ply the heavy vehicle. The tribunal recorded finding that he was having requisite driving licence under the rule, hence there is no violation of terms and conditions contained in the policy.

9. In the judgment relied by the learned Counsel for the Appellant the their Lordships also held that there is no category of vehicle under the head hazardous vehicle rather their Lordships noted that the category of vehicle like goods carriage, heavy goods vehicle, heavy passengers motor vehicle, so on. Admittedly, the driver was having licence to ply heavy vehicle. In consequence thereof the tribunal recorded a finding that the driver was possessing valid driving licence. In case the Appellant intends to take plea with regard to hazardous vehicle then the specific plea should have been taken in the written statements. Much emphasis has been placed by the learned Counsel for the Appellant on the provision Section 14 and Rule 9 of the Rule. Section 14 of the Motor Vehicle Act read with Rule 9 of the Central vehicle Rule speaks for hazardous vehicle. The driver was produced before the tribunal as DW-1 who was cross examined by the Appellant but he was not cross examined on the question of hazardous evidence by the Appellant. There is no evidence on record which may establish that the tanker was carrying some hazardous material. Whether it was petrol or water or some non-hazardous material is not born out from the record. In the absence of any pleadings on record with material it is not open at appellate stage to look into the matter beyond things. In case Appellant is of the view that the tanker was some hazardous vehicle attracting Section 14 of the Act read with Rule 9, the specific plea should have been taken by the Appellant. Even while filing the present appeal attention has not been invited on record which may reveal that the tanker was carrying some hazardous material. In the absence of any pleadings and evidence on record it is not open to consider the present controversy in terms of Section 14 of the Act read with Rule 9. The question is left open for some other cases with regard to Section 14 as well as Rule 9 of the Rules argued by the Appellant's counsel.

10. No other ground has been raised or pressed by the Appellant's counsel.

11. We do not find any illegality, impropriety or irregularity in the impugned judgment and award. The appeal, being devoid of merit, is dismissed.

12. In case the Respondent insurance company has not deposited the awarded amount before tribunal, then the rest of the amount shall be paid within two months to the claimants.