

(2012) 02 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3219 of 2007 in M.A.C.T. Petition No. 20 of 2005

Oriental Insurance Company Limited

APPELLANT

Vs

Mekh Chand and others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Payment of Bonus Act, 1965 — Section 2
Penal Code, 1860 (IPC) — Section 279, 337, 338, 427

Citation : (2012) 167 PLR 37

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Ravinder Malik, for the Respondent

Final Decision : Allowed

Judgement

Jitendra Chauhan, J.—The appellant, Oriental Insurance Company Limited, has preferred this appeal assailing the Award dated 24.04.2007 passed by the learned Motor Accident Claims Tribunal, Ambala, whereby the appellant has been held liable to indemnify the award. The brief facts of the case in hand are that on 8.10.2005 at about 12.00 noon, the claimant, Mekh Singh along with one Jaswinder Singh, was going to Ambala City on his Hero Honda motorcycle bearing registration No. HR-02K-7191. When they reached near the PKR Jain Vatika School on Hisar-Ambala road, a tractor-trolley bearing registration No. HR-04-7756, being driven by the driver, Gurmail Singh, respondent No.2 herein, in a rash and negligent manner, came from the back side and hit against their motorcycle. As a result of the accident, Jaswinder Singh fell down on the kacha berm on left side of the road whereas the claimant, Mekh Chand fell on the road and his right leg was crushed under the front wheel of the offending tractor. Their motorcycle was also run over by the said tractor. The injured-claimant was removed to the Civil Hospital, Ambala. An FIR No. 138 dated 8.10.2005 was registered under Sections 279, 337, 338, 427 IPC at Police Station Sadar Ambala.

2. With this background, the injured-claimant, Mekh Singh preferred claim petition before the learned Tribunal seeking compensation on account of the injuries sustained by him in the vehicular accident.

3. From the pleadings of the parties, the following issues were framed for determination by the learned Tribunal:-

(1) Whether the accident was caused due to the rash and negligent driving of tractor trolley bearing registration No. HR-04-7756 being driven by Gurmail Singh, respondent No.1 causing injuries to Mekh Chand, as alleged? OPP

(2) If issue No. 1 is proved in affirmative, whether the claimant is entitled to compensation. If so, to what amount and from whom? OPP

(3) Whether the respondent No. 3-Insurance Company is not liable to make payment of any compensation in view of the preliminary objections taken in the written statement? OPR-3

(4) Relief.

4. Issue No. 1 was decided in favour of the claimant while holding that the accident in question was caused due to the rash and negligent driving of the offending tractor by the driver, Gurmail Singh resulting into the injuries caused to the claimant. While deciding issue No.2, it was held that the injured-claimant was entitled to an amount of Rs. 70,000/- as compensation on account of the injuries sustained by him in the said accident. As regards issue No. 3, it was held that the as the driver, Gurmail Singh was holding valid and effective driving licence for driving the car/scooter at the time of the accident, and the offending tractor was fully insured with the Insurance Company (appellant herein) the respondents were jointly and severally liable to satisfy the Award.

5. Feeling aggrieved, the appellant-Insurance Company has preferred this appeal on the question of liability.

6. Learned counsel for the appellant has contended that the offending vehicle was being driven in violation of the terms and conditions of the Insurance policy. The driver of the offending Tractor was not holding a valid and effective driving licence. He has placed reliance upon the judgment rendered by the Division Bench of this Court in National Insurance Company Ltd. v. Shinder Kaur, (19981) 118 P.L.R. 369.

7. On the other hand, learned counsel appearing for the owner and the driver has contended that the driver was holding a valid and effective driving licence at the time of accident and the learned Tribunal has rightly held liable the Insurance Company, being the insurer of the offending vehicle, to indemnify the award.

8. I have heard the learned counsel for the parties and perused the record.

9. Admittedly, the accident occurred on 8.10.2005, in which Mekh Singh-claimant received multiple injuries. The main controversy in this appeal is with regard to

the liability. Karnail Singh, Licensing Clerk from the office of SDM, Rajpura, who produced the summoned record relating to the driving licence of Gurmail Singh, the driver, while examining as PW 1 deposed that as per record, the driving licence was issued to Gurmail Singh for driving scooter and car only. There is no endorsement made to drive the transport vehicle or other vehicle.

10. In Shinder Kaur's case (supra), this Court has observed as under:-

8. As regards the controversy is the driver Harbans had the licence to drive the tractor or not, the trial Court referred to the definition of "Light Motor Vehicles" occurring under sub-Section (21) of Section 2 of the Act. The same reads:-

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight or road-roller the unladen weight of any of which, does not exceed (7,500) kilograms.

It certainly shows that it includes a tractor, but in this regard one cannot ignore the definition of subsections (26) and (27) of Section 2 which are also being reproduced below for the sake of facility;-

(26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road -roller, tractor, motorcycle or invalid carriage.

(27) "motorcycle" means a two wheeled motor vehicle, inclusive of any detachable side car having an extra wheel, attached to the motor vehicle.

The above quoted definitions clearly indicate that in the definition of motor car, the tractor is not included. It may be a light motor vehicle for purposes of sub-section (24) of section 2 of the Act. But it will not be a motor car as explained above, because of the definition of the said expression under sub-section (24) of Section 2. These findings get support from the fact that expression "tractor" has specifically been defined under sub-section (44) of Section 2 which means a motor vehicle which is not itself constructed to carry any load other than equipment used for purpose of propulsion. Indeed it is clear beyond any pale of controversy that a motor car is not a tractor.

8. Reverting back to the facts it is clear that appellant had examined Ashok Kumar a clerk from the Transport Department as RW-2. He has deposed from the record with respect to the licence that had been granted to Harbans Singh. He deposed further that Harbans Singh had applied for issuance of a driving licence with respect to a scooter/car. The original application was submitted in Court which is Ex. R-2. He added that a notification had been issued regarding issuance of driving licences pertaining to different vehicles. Ex. R-1 is the copy of the driving licence and as is apparent from perusal of the judgment and a fact which was not disputed before us that driving licence of Harbans Singh was with respect to a scooter and car only. There is no mention that it is pertaining to a light motor vehicle or a tractor. Consequently, we have no hesitation in concluding that driving licence of Harbans Singh was only with respect to drive scooter and a car only.

9. In that event respondents" learned counsel as already pointed above has pressed the argument that intention was to get a licence to drive a light motor vehicle and, therefore, it should be so read that the licence was for driving of the tractor also. In our considered opinion the said contention is indeed totally devoid of any merit. While interpreting a statute the plain meaning of the word has to be followed, particularly when there is no ambiguity in interpreting the same. Reference to some of the precedents on the subject would be in the fitness of things. In the case of AIR 1939 47 (Privy Council) it was observed:-

But in truth when the meaning of words is plain it is not the duty of the Courts to busy themselves with supposed intentions.

Same question was considered by the Supreme Court in the case *Shriram and Others Vs. The State of Bombay*, In paragraph 8 the fundamental rule of interpretation of statutes was described to be:-

One of the fundamental rules of interpretation is that if the words of a statute are in themselves precise and unambiguous "no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.

Similarly while interpreting the Payment of Bonus Act, 1965 in the case of *Anandji Haridas and Co. Pvt. Ltd. Vs. Engineering Mazdoor Sangh and Another*, the view point was the same and the Court concluded:-

9. As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

The Constitution Bench in the case of *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, provided the following guidelines:-

The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke), Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can

reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

Same was the view in the case of *Ajay Pradhan Vs. State of Madhya Pradesh and Others*, and also subsequently in the case of *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, . The Court held:-

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.

Thus it is abundantly clear from what has been held above that when the language is clear and plain, the statute has to be interpreted accordingly. Literal meaning has to be given. In such like circumstances the intention has not even to be looked into. It has already been discussed above that the Motor Vehicles Act, 1988 makes a clear distinction between a motor car and a tractor. Both may be light motor vehicles. But when the licence was applied and granted for scooter and a car, it cannot be taken to be one for a tractor. The learned Tribunal was patently in error in thus concluding to the contrary.

10. It is obvious from the findings arrived at above that Harbans Singh did not have any licence to drive the tractor. Even if the tractor thus was insured, it will not fasten any liability on the appellant. To the same effect is the decision of this Court in the case of *Ram Narain v. Samitra Devi*, (1997-3) 118 P.L.R. 578."

11. In the present case, the licence held by the driver of the offending vehicle was for driving the scooter and car only. Therefore, in view of the *Shinder Kaur*'s case (*supra*), the licence held by the driver was not valid and effective for driving the tractor-trolley. If a person possesses a valid licence for driving a Car/Scooter, it cannot be taken to be one for tractor. Special endorsement is required on the licence to drive the tractor as well, which is missing in this case. The finding recorded by the learned Tribunal are erroneous and are hereby reversed. It is held that Gurmail Singh, driver was not holding a valid and effective driving licence to drive the tractor. It is further held that the Insurance Company is not liable to indemnify the award, and only liability is that of the driver and owner of Tractor bearing registration No. HR-04-7756, jointly and severally. In view of the above, the present appeal is allowed. The Insurance Company is absolved of its

liability. The Award of the learned Tribunal is modified to the extent that the appellant-Insurance Company will not be liable to pay the compensation. The statutory amount deposited by the Insurance Company with the Registry of this Court on 13.7.2007 shall be refunded to the Insurance Company -appellant herein.