

(2011) 09 SHI CK 0192
In the High Court Of Himachal Pradesh
Case No : FAO No. 211 of 2009

Oriental Insurance Company Ltd.

APPELLANT

Vs

Dayal Singh and Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 2, 2(14), 3

Citation : (2011) 09 SHI CK 0192

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—Both these appeals are being disposed of by a common judgment since they arise out of the same accident and the points involved in both the cases are the same.

2. Anup Ram claimant in one case and deceased Madan Lal in the other case were travelling in Mahindra Maxi Cab No. HP-02A-8007. A boulder fell on this vehicle, as a result of which both sustained injuries and Madan Lal died in the accident.

3. The Insurance Company in its reply raised the plea that, there was violation of the terms of the policy inasmuch as the deceased and the injured were travelling in Mahindra Maxi Cab as gratuitous passengers and the Insurance Company could not be held liable. The other plea raised by the Insurance Company was that the driver of the vehicle did not have a valid driving licence and hence it could not be held responsible.

4. As far as the first contention is concerned, the claimants in the claim petition alleged that they had hired the vehicle for getting the medical checkup of late Shri Madan Lal and the other three family members had also accompanied him. The owner and the driver of the vehicle in the reply admitted the contents of

paras 8 to 10, in which such averments were made.

5. Mr. G.C. Gupta, learned Senior Counsel appearing for the Insurance Company submits that the claimants led no evidence to show what was the amount paid for hiring the vehicle and led no proof to show that the vehicle in question was actually hired. He has placed reliance upon the judgment of this Court rendered in *Oriental Insurance Co. Ltd. Vs. Meera and Others*, In my view, this submission of Mr. G.C. Gupta learned Senior Advocate cannot be accepted. As stated above, the claimants had made a specific averment in the claim petition that they had hired the vehicle, which version was accepted by both the driver and the owner. The Insurance Company, no doubt, raised the plea that the claimants were gratuitous passengers, but once the owner and the driver had admitted the fact that the vehicle had been hired, the onus shifted upon the Insurance Company to disprove their claim. Furthermore, the driver of the vehicle appeared as RW-1 and in his statement he clearly stated that the deceased Madan Lal had hired the vehicle. Though, he was cross-examined by the counsel of the Insurance Company but no question was put to him in the cross-examination that the vehicle had not been hired and he was not asked to give any proof of hiring of the vehicle. Therefore, this contention is rejected.

6. The next contention raised by Mr. G.C. Gupta, learned Senior Advocate is that the driver did not have a valid driving licence to drive the vehicle since he was only entitled to drive light motor vehicle and not transport vehicle.

7. The undisputed fact is that the vehicle in question was a Mahindra Maxi Cab, therefore, it is a transport vehicle within the meaning of the Motor Vehicles Act. The driving licence of the driver has been exhibited as Ext.RW-1/A and it clearly shows that it was issued for light motor vehicle and not for transport vehicle.

8. The question whether a person holding a licence to drive a Light Motor Vehicle is entitled or not entitled to drive a transport vehicle has been the subject matter of a number of decisions.

9. A Full Bench of this Court dealt with a similar question and disposed of the reference in view of the judgments of the Apex Court rendered in *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, & *National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others*,

10. It is contended by Mr. G.C. Gupta, learned Senior counsel that the present case is squarely covered by the judgment rendered in *Kusum Rai's* case. On the other hand the contention of Mr. Lakshay Thakur and Mr. H.S. Rawat, Advocates, is that the case is squarely covered by *Annappa Irappa's* case.

11. In *Kusum Rai's* case (supra) the Apex Court was dealing with the question as to whether the Insurance Company could be held liable in a case where the driver driving the taxi, a commercial vehicle, did not hold a driving licence entitling him to drive a commercial vehicle. In para 11, the Apex Court held as follows:

11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a Light Motor Vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The Appellant, therefore, could raise the said defence.

12. Thereafter, the Apex Court in *New India Assurance Company Ltd. v. Prabhu Lal* (2008) 1 SCC 696, also took a similar view. However, it would be pertinent to mention that, that this case arose out of proceedings under the Consumer Protection Act. The Apex Court in that case held as follows:

33. In our considered view, the State Commission was wrong in reversing the finding recorded by the District Forum. So far as Ashok Gangadhar is concerned, we will deal with the said decision little later but from the documentary evidence on record and particularly, from the permit issued by the Transport Authority, it is amply clear that the vehicle was a "goods carrier" [Section 2(14)]. If it is so, obviously, it was a "transport vehicle" falling under Clause (47) of Section 2 of the Act. The District Forum was, therefore, right in considering the question of liability of the Insurance Company on the basis that Tata 709 which met with an accident was "transport vehicle".

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38. We find considerable force in the submission of the learned Counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question.

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41. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a Light Motor Vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable.

13. If the matter had ended here the case could have been decided very easily but the Apex court in *National Insurance Company Ltd. Vs. Annappa Irappa*

Nesaria and Others, has not only considered these points but also considered the effect of the amendment made in the Motor Vehicles Act. After considering the entire law the Apex Court held as follows:

20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

21. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

14. The Apex Court therefore held that w.e.f. 28.3.2001 a specific endorsement to drive a transport vehicle is necessary but prior to that date such endorsement was not necessary since a light motor vehicle in its definition as it existed prior to said date included a light transport vehicle. It is thus obvious that the endorsement is required only after 28.3.2001.

15. In *Oriental Insurance Company Ltd. v. Angad Kol and Ors.* 2009 ACJ 1411, the Apex Court again held that when a driver is given a licence to drive a Light Motor Vehicle (LMV) it would include in its ambit both transport and non-transport vehicles. The Apex Court further went on to hold that for the licence to be effective it should be expressly stated or it should be clearly implied that the licence is valid to drive a transport or non-transport vehicle. In that case, the licence had been issued for LMV only and was valid for 20 years. The Apex Court held that this means that the licence had been issued for a non transport vehicle since a licence for a transport vehicle could only be issued for only three years at a time. It, therefore, went on to hold that the driver did not hold a valid and effective driving licence to drive a transport vehicle.

16. Therefore, following the decision of the Apex Court in *National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others*, it is held that the Insurance Company is not liable to indemnify the insured and is not liable to

pay the amount of compensation since the accident in the present case occurred after 29.3.2001.

17. The second question raised before me is whether the insurance company should be asked to satisfy the award and recover the amount from the insured.

18. Mr. Lakshay Thakur, learned Counsel for the claimants, has placed reliance on the judgment of the Apex Court in *Kusum Lata and Others Vs. Satbir and Others*, relevant portion of which reads as follows:

x x x

13. In respect of the dispute about licence, the Tribunal has held and, in our view

rightly, that the Insurance Company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others,

14. The appeal is, therefore, allowed. The judgments of the Tribunal and the High Court are set aside. The Insurance Company is to pay the aforesaid amount in the form of a bank draft in the name of Appellant No. 1 with interest as aforesaid within a period of six weeks from date and deposit the same in the Tribunal. This direction should be strictly complied with by the Insurance Company.

x x x

19. On the other hand Mr. G.C. Gupta, learned Senior counsel for the Appellant has relied upon a judgment delivered by this Court itself in *The Oriental Insurance Company Ltd. v. Smt. Meera and Ors.*, Latest HLJ 2010 (HP) 156 wherein this Court held that this Court cannot direct the insurance company to satisfy the award once it has not been held liable. The reasoning given by this Court was based on the judgment of the apex Court in Civil Appeal arising out of SLP (C) No. 10694.

20. In the aforesaid case the Apex Court had set aside the similar directions of this Court directing the insurance company to satisfy the award on the ground that the Apex Court had given directions in various cases in exercise of its powers under Article 142 of the Constitution and such powers are not vested in the High Court.

21. Now, the Apex Court in *Kusum Lata and Others Vs. Satbir and Others*, has clearly held that in case where there is violation of the driving licence, then the insurance company can be asked to satisfy the award with liberty reserve to it to recover the amount from the owner of the vehicle. Following the ratio of the Apex Court, the insurance company is directed to satisfy the award but it shall be at liberty to recover the same from the owner. It is clarified that the insurance company will not have to file separate suit or proceedings to recover the amount and can recover the amount from the owner by filing execution proceedings.

22. In view of the aforesaid discussion, both the appeals are partly allowed in the aforesaid terms. No costs.