

(2008) 07 JH CK 0182
In the Jharkhand High Court

Prawej Ansari

APPELLANT

Vs

Hatim Ali Ansari and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Citation : (2008) 4 JCR 466

Hon'ble Judges : Gyan Sudha Misra, C.J;D.K. Sinha, J

Bench : Division Bench

Judgement

1. This appeal has" been preferred by the appellant Prawej Ansari against the order dated 17.1.2008 passed by the leaned Single Judge in W.P. (C) No. 5633 of 2005 [see Prawej Ansari Vs. Hatim Ali Ansari and Others, by which the learned Single Judge has been pleased to dispose of the writ petition with liberty to the petitioner-appellant to challenge the findings recorded in the award of the Tribunal dated 16.4.2005 passed by the Motor Accident Claims Tribunal, Gumla, by. which the application of the Insurance Company was allowed granting liberty to the Insurance Company to realize the amount of compensation from the owner of the vehicle i.e., the petitioner herein, who, according to the findings recorded by the Tribunal, had allowed his vehicle to be driven by a minor without driving licence, which had caused the accident. The learned Single Judge has categorically ordered that the petitioner-owner of the vehicle will have opportunity to raise the question of law but he will" not be at liberty to assail the findings of fact recorded by the Tribunal.

2. The counsel for the petitioner-appellant, who is admittedly the owner of the vehicle, submitted that the application filed by the Insurance Company claiming recovery of the amount from the owner was entertained without any information to the counsel for the owner of the vehicle, as a result of which, the Tribunal finally ordered that the amount of compensation determined by the Tribunal shall be payable by the owner of the vehicle. It was submitted that although on the subsequent occasion, the plea of the Insurance Company was entertained to recover the amount from the appellant-owner but as in the initial award the

Insurance Company had been held liable to pay the amount of compensation, the findings recorded against the owner of the vehicle had not been assailed before the higher forum. It has been submitted that the finding recorded by the Tribunal suffers from perversity as the appellant-owner did not get ample opportunity to assail the findings of the Tribunal.

3. In response to the aforesaid contention, learned Counsel for the respondent-Insurance Company Mr. Manish Kumar submitted that the owner in spite of service of notice did not contest the matter although he had appeared before the Tribunal at one stage. It was further explained that a categorical finding has been recorded by the Tribunal to the effect that the owner of the vehicle had allowed his vehicle to be driven by a minor who was not even possessing a driving licence and this finding was based on a document which was produced even before the criminal Court. It was, therefore, submitted that the owner of the vehicle cannot be permitted to assail the findings recorded by the Tribunal especially when he has been granted liberty to raise only the question of law by the learned Single Judge while directing for remand of the matter before the Tribunal.

4. Having perused the order passed by the learned Single Judge in the light of the submissions advanced by the counsel for the parties, we are of the view that according to the learned Single Judge the appellant-owner would be entitled to raise only the question of law and not the question of fact. But, in our view if a controversy on the question of law only was fit to be raised, then the same could have been decided by the learned Single Judge himself by entertaining the writ petition and the order of remand merely for deciding a question of law is not sufficient. We, therefore, cannot overlook the effect of the order which impressed the learned Single Judge ultimately to the extent that an opportunity of hearing to the owner of the vehicle was required but the same was confined merely to raising the question of law.

5. We have noticed that the owner of the vehicle did not avail the opportunity to contest the matter before the Tribunal and hence it will have to be inferred that he had refrained from doing so, as the vehicle was admittedly insured. But once the finding was recorded that the owner of the vehicle was at fault by not following the terms and conditions of the policy, it would be in the interest of justice to grant him opportunity to address the Tribunal on the question as to whether the vehicle was driven by a minor or a major without a driving licence. Since the learned Single Judge has already ordered for remitting the matter to the Tribunal, we are of the view that it would be in the interest of justice not to confine the Tribunal merely for determination of the question of law and therefore we permit the appellant-owner to address the Tribunal also on the question as to whether the vehicle which caused accident was driven by a minor or not and whether the driver was owning a valid driving licence. But the appellant's counsel has informed that the Tribunal has already passed the final order allowing the Insurance Company to realize the amount of compensation from the appellant-owner. Hence we direct the Tribunal to defer the execution of

the order for a period of eight weeks from the date of receipt/production of a copy of this order and in the meantime grant opportunity of hearing to the owner of the vehicle along with the Insurance Company in order to determine whether the vehicle had been driven by a minor or a major with or without a driving licence. The appeal, thus is allowed in view of the aforesaid liberty.

6. We may add that the claimant is granted exemption from appearing before the Tribunal as the question of quantum of compensation is not required to be gone into and the claimant has already received the compensation amount.

7. The appeal, accordingly, stands disposed of.