
(2004) 08 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 404 of 2002 and Cross-objection No. 532 of 2002

Shyam Lal

APPELLANT

Vs

Haru Ram and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2), 149(2), 2, 3

Citation : (2006) ACJ 749

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Lalit Sharma, for the Appellant; Anand Sharma, Tarlok Chauhan and Deepak Bhasin, for the Respondent

Judgement

Arun Kumar Goel, J.—This is owner's appeal against the award dated 1.7.2002, passed by the Motor Accidents Claims Tribunal, Kullu, in Claim Petition No. 49 of 2001. Learned Tribunal below while recording findings on issue No. (iv) held that driver of the vehicle was not holding a valid driving licence to have driven a mini truck, a transport vehicle, therefore, the insurance company was exonerated and appellant as well as the driver of the vehicle were held liable jointly and severally to pay compensation to the tune of Rs. 49,495, with interest at the rate of 9 per cent per annum from the date of petition, i.e., 29.3.2001 till payment. After having exonerated the insurance company, claim petition against it was dismissed.

2. Dr. Lalit Sharma, in support of this appeal submitted that accepting everything to be there against his client for the sake of argument, but without admitting, still the impugned award cannot be sustained against the appellant, as according to him, vehicle being insured with the insurance company was not in dispute. The same having met with accident on 3.11.1999 at about 2/2.30 p.m. was also not in dispute.

3. There is evidence to suggest that Haru.Ram, respondent No. 1, as a result of the accident in question on 3.11.1999, was admitted in Civil Hospital, Sainj and

then he was shifted to Civil Hospital, Kullu on 5.11.1999 where he remained as indoor patient till 18.11.1999. Injuries sustained by him were on his leg, hips and chest. Beside this, his left leg had compound fracture. As a result of these injuries, the respondent No. 1 was not in a position to walk properly. His permanent disability was certified by the Medical Board to the extent of 48 per cent. He claimed income of Rs. 8,000 per month and accident being outcome of rash and negligent driving on the part of Hukum Chand, driver.

4. Factum of accident was admitted by the owner as well as the driver. However, their defence was that after urinating, the respondent-claimant turned back and tried to cross the road when the accident took place. It was attributed to his (Haru Ram's) wrong act when he made an attempt to cross the road without caring for the coming vehicles. Injuries as well as hospitalisation of the appellant-respondent No. 1 was not admitted. Insurance company denied the accident or the injured having sustained any injury as a result of any such accident. His disability was also denied.

5. The learned Tribunal after framing following issues, has passed the impugned award:

(i) Whether petitioner while walking on the road on 3.11.1999 at Aut was hit by jeep bearing No. HP 33-3857 due to its rash and negligent driving by the respondent No. 2, as alleged? OPP

(ii) If issue No. 1 is proved, whether the petitioner suffered multiple grievous injuries in the accident as alleged?

OPP

(iii) Whether the petitioner suffered permanent disability due to injuries and is entitled for compensation? If so, to what extent and from whom? OPP

(iv) Whether the respondent No. 2 had no valid driving licence at the time of accident, if so, to what effect? OPR-3

(v) Relief.

6. On the basis of material on record, it is evident that the vehicle in question was jeep and not mini truck as observed by the learned Tribunal below. Driver was authorized to drive LMV only. In this behalf suffice it to say that he was driving a jeep which is a light motor vehicle. Mr. Bhasin, on behalf of the insurer submitted that the impugned award on this aspect is perfectly legal being in consonance with the provisions of Motor Vehicles Act, 1988 and the rules framed thereunder. Ordinarily, this plea should have found favour with this court. However, for the reasons to be recorded hereinafter, this plea has no merit in the facts of this case and, therefore, is hereby rejected.

7. With a view to get itself exonerated of the liability for payment of compensation, insurance company is further required to show that driver was not holding a valid licence having a specific endorsement, was the direct or

contributory reason for causing of the accident. Unless this fact was proved by legally acceptable evidence, this by itself cannot be made a ground to exonerate the insurance company.

8. It may be appropriate to observe that merely because the driver was not authorised to drive the taxi, thus insurer has always to be exonerated is not correct. But if a direct nexus is shown between the accident and a licence, insurer can be exonerated in a given case. Because there can be so many causes of an accident being there. One can be that despite due diligence and care, accident is caused. Another can be unforeseen situation, like vis major, act of God, bad road condition or negligence of the victim of accident.

9. In a case where there is no fault on the part of the driver, the question as to whether the driver was holding a valid driving licence or not, would be of least consequence. Recently this aspect came up before the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, What was held and is relevant in this case is as under:

(26) A right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to wrong doing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for a variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.

(57) There may be a case where an accident takes place without there being fault on the part of the driver. In such an event, the question as to whether a driver was holding a valid licence or not would become redundant.

10. In the case of Jitendra Kumar Vs. Oriental Insurance Co. Ltd. and Another, where vehicle was damaged due to accidental fire and the driver was not holding a valid driving licence at the time of accident, the claim of the owner was repudiated by the insurance company on this ground. The Apex Court negated the stand of the insurance company and held it liable for payment of compensation, because there was no nexus between the accident and the licence.

11. When a person was granted licence for one type of vehicle, but at the relevant point of time he was driving another type of vehicle, was again a question that was considered by the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, This question was answered in paras 81 to 84 of the judgment in the following terms:

When the person has been granted licence for one type of vehicle but at the relevant time he was driving another type of vehicle:

(81) Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder to drive the vehicle falling within that class or description.

(82) 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 Central Government to prescribe the 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) motor cycle without gear; (b) motor cycle 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", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motor cab", "motor cycle", "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. A person possessing a driving licence for "motor cycle without gear", 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 "maxicab", "motor cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Claims 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 accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failure and similar other causes having no nexus with 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.

(83) We have construed and determined the scope of Sub-clause (ii) of Sub-section (2)(a) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

(84) On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of the insurer and insured; although where such adjudication is likely to entail undue

delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

12. A perusal of the evidence in this case, clearly shows that there is nothing to suggest that the licence of the driver being authorised to drive light motor vehicle was the direct and/or contributory cause of accident in question. It was for the insurer to have led sufficient as well as legally acceptable evidence to prove this plea.

13. Now coming to cross-objections. Looking to the age of the claimant, it is felt that no exception can be taken to the compensation awarded. In addition to this, on the basis of evidence on record, I am satisfied that compensation awarded is just and reasonable in the peculiar facts and circumstances of this case, which needs to be upheld, though an attempt was made by Mr. Anand Sharma for its enhancement.

14. Taking into account overall facts and circumstances of this case, this appeal is partly allowed thereby holding that the awarded amount with costs and interest will be payable by respondent No. 3, i.e., National Insurance Co. Ltd. and not by the appellant in the light of the materials on record as well as on the legal position discussed hereinabove and the award to this limited extent is hereby modified and the cross-objections dismissed. The amount deposited with up-to-date interest will be released in favour of the appellant and the insurance company is directed to deposit the amount in terms of this judgment by or before 31.10.2004, failing which it shall be liable to pay interest at the rate of 12 per cent per annum on and w.e.f. 29.3.2001. It is clarified that if any amount stands already deposited/paid by the insurance company, it shall be deducted out of the awarded amount in terms of this judgment. On deposit being made, the amount in question will be remitted to the account of Haru Ram, respondent No. 1, the number whereof his learned Counsel stated, will be furnished within two weeks from today.