(2016) 11 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : FAO No. 398 of 2012

Smt. Inder Kaur APPELLANT

Vs

Smt. Shanti Devi RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) 1 ACC 107 : (2016) LatestHLJ(HP) 1457

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. N.K. Tomar, Advocate, for the Respondents No. 1 to 4; Mr. N.K. Gupta, Advocate, for the Respondent No. 5; Ms. Devyani, Sharma, Advocate, for the Respondent No. 6; Mr. B.C. Negi, Senior Advocate with Mr. Narender Thakur, Advocate, for the Appellants

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - Subject matter of this appeal is the judgment and award, dated 4th June, 2012, made by the Motor Accident Claims Tribunal-I, Sirmour, District Sirmour at Nahan, H.P. (for short ''the Tribunal'') in MAC Petition No. 49-MAC/2 of 2009, titled as Smt. Shant Smt. Shanti Devi & others v. Kuldeep Singh & others, where by compensation to the tune of Rs. 3,70,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realisation came to be awarded in favour of the claimants and the legal heirs of the owner-insured were saddled with liability (for short ''the impugned award'').

2. The claimants, insurer and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The legal heirs of the insured-owner have questioned the impugned award on the grounds that the Tribunal has fallen in an error in discharging the insurer from liability and saddling them with the same.

4. The entire controversy in this appeal revolves around Issues No. 4 & 5 framed by the Tribunal in the claim petition. It is apt to reproduce the aforesaid issues herein:

"4. Whether the driver of the vehicle did not possess a valid and effective driving licence at the relevant time, as alleged? ?OPR-3

5. Whether the vehicle was being plied without a valid permit and in violation of the terms and conditions of insurance policy, as alleged? ?OPR-3.

5. Admittedly, the driver was having driving licence to drive the ''light motor vehicle'' and vehicle involved in the accident was Three Wheeler bearing No. HP-50-0102, which falls within the definition of ''light motor vehicle'' in terms of Section 2(21) of the Motor Vehicles Act, 1988, for short ''the MV Act''.

6. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & ors., being LPA No. 180 of 2002, decided on 27th September, 2007 has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above mentioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. v. Irfan Sidiq Bhat, 2004 (II) SLJ 623, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorisation of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:-

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorisation in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

?......................

17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E"

licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle." In the given circumstances of the case PSV endorsement was not required at all."

7. The mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as Chairman, Rajasthan State Road Transport Corporation & ors. v. Smt. Santosh & Ors., reported in 2013 AIR SCW 2791, and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

"19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semitrailer is attached; Section 2(34) defines public place; Section 2(44) defines ''tractor'' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines ''trailer'' which means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. ?......................

21. ?.....................

22. ?....................

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in subsection (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''."

8. The Apex Court in another case titled as National Insurance Company Ltd. v. Annappa Irappa Nesaria & Ors., reported in 2008 AIR SCW 906, has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of ''light motor vehicle'', ''medium goods vehicle'' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the ''light motor vehicle'' as contained in Section 2(21) of the Motor vehicles Act, 1988 (''Act'' for short), a light goods carriage would come within the purview thereof. A ''light goods carriage'' having not been defined in the Act, the definition of the ''light motor vehicle'' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle. Strong reliance has been placed in this behalf by the learned counsel in Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd., [1999 (6) SCC 620].

9. ?.................

10. ?..............

11. ?..............

12. ?.............

13. ?.............

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles. Clause (e) provides for ''Transport vehicle'' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15. ?........................

16. 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."

9. The Apex Court in the latest judgment in the case titled as Kulwant Singh & Ors. v. Oriental Insurance Company Ltd., reported in JT 2014 (12) SC 110, held that PSV endorsement is not required. 110,

10. The same principle has been laid down by this Court in a series of cases.

11. Viewed thus, the Tribunal has fallen in an error in holding that the driver was not having a valid and effective driving licence at the relevant point of time. Accordingly, Issue No. 4 is decided in favour of the driver and owner-insured and against the insurer.

12. It was for the insurer to prove this issue, has not led any evidence, thus has failed to discharge the onus. Accordingly, this issue is also decided in favour of the driver and owner-insured and against the insurer.

13. Having said so, the impugned award is modified by holding that the insurer has to satisfy the impugned award.

14. The insurer is directed to deposit the award amount along with interest, within a period of eight weeks from today before the Registry. On deposit, the Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing the same in their accounts.

15. Learned Counsel for the appellants-legal heirs of the owner-insured stated at the Bar that the entire award amount stands deposited before the Registry.

16. The amount deposited by the appellants/legal heirs of the owner-insured be released in their favour through payees'' account cheque or by depositing the same in their accounts.

17. Send down the record after placing copy of the judgment on Tribunal''s file.