
(2009) 07 UK CK 0053
In the Uttarakhand High Court

Sohan Singh

APPELLANT

Vs

National Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2010) ACJ 2064

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed by the appellant/owner of the offending vehicle No. UP07E/9333 against the judgment and award dated 06.08.2007 passed by Motor Accident Claim Tribunal/ District Judge, Tehri Garhwal in Motor Accident Claim Case No. 48 of 2005, Smt. Indra Dei Devi v. Sohan Singh and Ors..

2. Brief facts of the case are that on 24.03.2005, the deceased Puran Singh was coming from Chamba to Jolangi to his home in a vehicle No. UP07E/9333. At about 03:30 p.m., when the said vehicle reached near Primary School, Guldi, Chamba Road, it met with an accident due to rash and negligent driving of its driver, in which, the Puran Singh had died. According to the claim petition, the deceased was 50 years of age at the time of the accident and was running a shop and it was alleged that he was earning Rs. 8,000/- per month. Hence, an amount of Rs. 22,25,000/- was claimed as compensation.

3. The opposite party No. 1 - Sohan Singh/owner of the offending vehicle contested the claim petition on the ground that the amount claimed by the claimant is on the higher side. It has further alleged that the vehicle in question was insured with the National Insurance Company Ltd., therefore, the liability of compensation lies upon the insurer of the vehicle in question.

4. The opposite party No. 2 - National Insurance Company Ltd. contested the claim petition alleging therein that the driver of the vehicle in question was not

having the valid driving licence as well as other papers of the vehicle on the date of accident. It has further pleaded that the vehicle in question was being plied in violation of policy. Therefore, the insurer of the vehicle is not liable to pay any compensation.

5. The opposite party No. 3 - Surveer Singh/driver of the vehicle in question also contested the claim petition alleging therein that on the date of accident he was driving the vehicle carefully and the accident took place due to technical failure. He has further alleged that he was having the valid and effective driving licence on the date of accident.

6. On the basis of the pleadings of the parties, the Tribunal has framed following issues:

1. Whether the accident in question took place at about 03:30 p.m. on 24.03.2005 near Prathmik Vidyalaya Guldi Road Chama, District Tehri Garhwal due to rash and negligent driving of Commander Jeep No. UP07E/9333 by the driver resulting death of Puran Singh as alleged?

2. Whether the driver of the vehicle was not duly licenced causing breach of terms and conditions of contract of insurance as well as owner of the vehicle die not possess valid permit and fitness of the vehicle in violation of the provisions of Motor Vehicle Act as alleged by OP No. 2 in paragraph No. 6 and 8 respectively of its WS? If so its effect?

3. To what compensation is the petitioner entitled and from which of the opposite parties?

7. Thereafter, both the parties led evidence in support of their cases. After hearing learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 1,17,000/- along with conditional interest @ 7% per annum from the date of filing the claim petition till the date of actual payment vide judgment and award dated 06.08.2007. The Tribunal further directed that the amount so awarded shall be paid by the Insurance Company to the claimant, but the Insurance Company will have a recoverable right from the owner of the offending vehicle.

8. Feeling aggrieved by the aforesaid judgment and award, the appellant/owner of the vehicle has preferred this appeal before this Court.

9. Heard Sri Promod Belwal, Advocate, holding brief of Sri N.S. Pundir, learned Counsel for the appellant, Sri Deepak Rawat, learned Counsel for the respondent No. 1, Sri I.P. Kohli, learned Counsel for the respondent No. 3 and perused the record.

10. As far as the factum of accident is concerned, the Tribunal has decided this issue while deciding issue No. 1. The finding recorded by the Tribunal that the accident took place on account of rash and negligent driving of the driver of the offending jeep appears to be completely justified and I am in total agreement

with the findings recorded by the Tribunal. The Tribunal decided issue No. 3 relating to the amount of compensation. The amount awarded by the Tribunal is just and proper and need no interference.

11. The most vital point involved in this case is as to whether the owner of the offending vehicle could be made liable to pay the amount of compensation on account of the reason that there was no hill endorsement in the driving licence of the driver of the vehicle who was driving the same at the time of the accident. The Tribunal has recorded a finding that there was no endorsement in the driving licence of the driver of the offending vehicle, which is paper No. 57C available in the record of the court below, to ply the vehicle on hill route. The Tribunal in the absence of the endorsement of the driving licence has held the owner of the offending vehicle liable to pay the amount of compensation and thus has given the recoverable right to the Insurance Company.

12. I think, the finding recorded by the Tribunal suffers with infirmity, as there are so many cases decided by this Court and it has been categorically observed by this Court that if the hill endorsement is not available in the driving licence of the driver, who was plying the vehicle on hill route as required under the provisions of Rule 193 of the Motor Vehicles Rules, the same will not make the driving licence of the driver invalid and ineffective. The Hon''ble Apex Court in *National Insurance Company Ltd. v. Swarn Singh* reported in AIR 2004 SCW 663 and *Lal Chand v. Oriental Insurance Company Ltd.* reported in AIR 2006 SCW 4832 has observed that merely on the ground of absence of endorsement to drive the vehicle on hill routes, as required under Rule 193 of the Motor Vehicles Rules, will not make the driving licence as invalid. The Hon''ble Apex court discarded the arguments advanced by the Insurance Company in this regard before the Hon''ble Apex Court where it was argued that there was no hill endorsement on the driving licence of the driver, which makes the driving licence invalid and ineffective.

13. The Division bench of this Court, in the case of *The New India Assurance Company Ltd. v. Smt. Kala Devi @ Kalawati Devi and Ors.*, decided on 31.10.2006, has observed that the driving licence of the driver will not be held invalid merely on the ground of absence of endorsement to drive the vehicle on hill routes under the provisions of Rule 193 of Motor Vehicles Rules. The Division Bench of this Court also relied upon the decision of Hon''ble Apex Court rendered in case of *National Insurance Company v. Swarn Singh* (supra), in which it has been observed as under:

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of

negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to driver at the relevant time. (iv) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his disqualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

14. In another case, the Division Bench of this Court further relied upon the decision of Hon"ble Apex Court in the case of Lal Chand v. Oriental Insurance Company Ltd. (supra), in which it has observed as under:

In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would not then be absolved of its liability.

15. Therefore, in view of the aforesaid judgments of the Hon"ble Apex Court as well as Division Bench of this Court, I am of the view that merely in the absence of endorsement in the driving licence of the driver to ply the vehicle on hill routes will not make the driving licence ineffective and invalid and there is no justification on the part of the Tribunal to direct that the Insurance Company will have a recoverable right from the owner of the vehicle on this count.

16. Learned Counsel for the respondent/Insurance Company has submitted that the driver of the offending vehicle was plying the transport vehicle on the hill route at the time of the accident, therefore, in the absence of endorsement in the driving licence to ply the vehicle on the hill routes will be said to be ineffective and invalid.

17. I fail to appreciate the arguments advanced by learned Counsel for the Insurance Company as the Act nowhere envisage that if the hill endorsement is absent from the driving licence of the driver, who is driving the transport vehicle on hill route, will have the effect with regard to the breach of Section 149(2)(a) (ii), as the Act has not made any distinction in this regard that the hill endorsement on the driving licence of the driver who is driving the transport vehicle on the hill route will be essential, while that will not be essential when the non-transport vehicle is being plied by the driver on hill route.

18. For the reasons stated above, the appeal is partly allowed. The impugned judgment is modified to an extent that the liability to pay the amount of

compensation rests on the Insurance Company instead of owner of the vehicle. The direction recorded by the Tribunal in the impugned judgment and award to the effect that the Insurance Company will have a recoverable right from the owner of the vehicle is hereby set aside.

19. The statutory amount deposited by the appellant before this Court be remitted to the Tribunal concerned.