(2015) 06 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : FAO No. 273 of 2008

The New India Assurance Co. Ltd. APPELLANT

Vs

Roshan Lal and Others RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 112, 133, 134, 146

Citation : (2015) 06 SHI CK 0012

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Ratish Sharma, for the Appellant; Neeraj Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J—Subject matter of this appeal is judgment and award, dated 25.02.2008, made by the Motor Accident Claims Tribunal, Kullu, H.P. (for short "the Tribunal") in Claim Petition No. 11 of 2007, titled as Roshan Lal versus Vishal Ranchan and others, whereby compensation to the tune of Rs. 89,000/- with interest @ 7% per annum from the date of the petition till its realization came to be awarded in favour of the claimant-injured (for short "the impugned award").

2. The claimant-injured, the owner-insured and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Mr. Ratish Sharma, learned counsel for the appellant, stated at the Bar that he has confined his attack to the impugned award only on the ground that the driver, namely Shri Uttam Singh, was driving offending vehicle, i.e. Tata Mobile No. HP-34 B-0436, which was a goods carriage and he was having a driving licence to drive a light motor vehicle and not goods carriage, thus, was not holding a valid and effective driving licence.

4. The argument of the learned counsel for the appellant is devoid of any force for the following reasons:

5. Admittedly, the offending vehicle was Tata 207DI Pick Up, the unladen weight of which is 1670 kg, and laden weight is 2820 kg, as per the registration certificate, Ext. RW-1/A, which falls within the definition of light motor vehicle.

6. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2(10), 2(21), 2(35) and 2(47), respectively, of the Motor Vehicles Act, 1988 (for short "the MV Act") herein:

"2. ....

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.

xxx xxx xxx

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor-cab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

7. Section 2(21) of the MV Act provides that a "light motor vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms. Section 2(35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor-cab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2(47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

8. The purpose of 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 and Others Vs. Smt. Santosh and Others, (2013) 2 ACC 501 : (2013) ACJ 1906 : (2013) 6 AD 140 : AIR 2013 SC 2150 : (2013) 7 JT 412 : (2013) 172 PLR 76 : (2013) 7 SCALE 230 : (2013) 7 SCC 94 :

(2013) AIRSCW 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 semi-trailer 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 semitrailer 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 sub-section (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'', ''motor-cycle'', ''omnibus'', ''private service vehicle'', ''semi- trailer'', ''tourist vehicle'', ''tractor'', ''trailer'' and ''transport vehicle''."

9. The Apex Court in another case titled as National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, (2008) ACJ 721 : AIR 2008 SC 1418 : (2008) 1 JT 617 : (2008) 149 PLR 251 : (2008) 1 SCALE 642 : (2008) 3 SCC 464 : (2008) AIRSCW 906 : (2008) 1 Supreme 378 , 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 Vs. Oriental Insurance Co. Ltd., (1999) 2 ACC 463 : (2000) ACJ 319 : AIR 1999 SC 3181 : (1999) 4 CompLJ 125 : (1999) 6 JT 423 : (1999) 123 PLR 523 : (1999) 5 SCALE 346 : (1999) 6 SCC 620 : (1999) 2 SCR 202 Supp : (1999) 2 UJ 1520 : (1999) AIRSCW 3142 : (1999) 9 Supreme 478 .

9. to 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."

10. Viewed thus, the driver of the offending vehicle was having a valid and effective driving licence.

11. The Apex Court in the case titled as National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243 , has laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105.....................

(i)........................

(ii)........................

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have 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 the insured or the third parties. To avoid its liability towards 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).........................

(vi) 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 qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards 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 insured under Section 149 (2) of the Act."

12. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in Pepsu Road Transport Corporation Vs. National Insurance Company, (2014) 2 ACC 18 : (2013) 3 ACC 871 : (2013) ACJ 2440 : AIR 2014 SC 305 : (2013) 4 CPJ 84 : (2013) 4 PLR 750 : (2013) 4 RCR(Civil) 273 : (2013) 10 SCALE 663 : (2013) 10 SCC 217 : (2014) 1 SCC(L&S) 750 , herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

13. Having said so, I am of the considered view that the Tribunal has rightly saddled the insurer with liability.

14. Viewed thus, the appeal deserves to be dismissed and the impugned award is to be upheld. Accordingly, the appeal is dismissed and the impugned award is upheld.

15. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award after proper identification.

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

