

(2009) 07 AHC CK 0225
In the Allahabad High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Shravan Kumar Shukla and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

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

Citation : (2009) 07 AHC CK 0225

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—Heard Sri U.P.S. Kushwaha, learned Counsel for the appellant and Sri R.P. Singh, learned Counsel for the respondents.

2. This "First Appeal From Order" has been filed by the New India Assurance Co. Ltd. against the judgment and award dated 13.9.2005 passed by the Motor Accident Claims Tribunal, Barabanki in Claim Petition No. 74 of 1999, wherein an award of Rs. 1,72,000/- was awarded.

3. The brief facts of the case are that on 3.1.1999 at about 10.00 A.M., the driver of Truck No. UP 78, N-8706 met with an accident at Haidergarh-Lucknow road near village Gotauna, Police-Station Haidergarh, district Barabanki and hit a child namely Satish Kumar, aged about 6 years. The child died on the spot and FIR was lodged against the driver Sri Ashok Kumar. The claimants-respondents filed the claim petition where an award of Rs. 1,70,000/- was awarded and Rs. 2000/- was awarded for funeral charges. Thus, the total amount was awarded for Rs. 1,72,000/- along with 4% interest from the date of filing of the claim petition till the payment against the Insurance Company.

4. With this background, learned Counsel for the appellant admitted that the truck was duly insured with the Insurance Company w.e.f. 26.10.1998 to 25.10.1999 and accident took place on 3.1.1999. He argued that the driver of the truck was not having the valid license of heavy motor vehicles but he was

having the license of light motor vehicles. For this purpose, he relied on Section 2(16) of the Motor Vehicles Act which defines the heavy good vehicles as under-

2(16) - "heavy good vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

He further stated that Section 2(21) defines light motor vehicles-

2(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.

5. He submitted that truck was DCM Toyota and its weight is 7,780 kilogram which was exceeding from the weight of light motor vehicle and comes under heavy motor vehicles. He further submitted that the driver Sri Ashok Kumar was not possessing the license of heavy motor vehicle on the date of accident. So the Insurance Company is not liable to pay the compensation.

6. Without prejudice to above, Sri Kushwaha, learned Counsel for the appellant, took another plea pertaining to compensation as the deceased child was aged about six years and compensation should have been Rs. 50,000/- in the absence of credible evidence for the potential for higher earning. He also submitted that child was crossing the busy road without any adult person tow and it was the carelessness and negligence on the part of the parents.

7. He also relied on the ratio laid down in National Insurance Co. Ltd. v. Kusum Rai and Ors. AIR 2006 SCW 1649 where the driver was not authorized to drive the commercial vehicle. He further relied on the ratio laid down in National Insurance Co. Ltd. v. Mrs. Kanti Devi and Ors. 2005 (2) AWC 1914 (SC) wherein it was observed that the insurer can also take defence that the driver has no license for driving a particular type of vehicle. Lastly, he made a request that as per the ratio laid down in Ishwar Chandra and Ors. v. The Oriental Insurance Co. Ltd. and Ors. (2007) SC 253, the Insurance company should be authorized to recover the money from the owner of the vehicle as the driver was not authorized to drive the heavy motor vehicle.

8. On the other hand, learned Counsel for the respondents has justified the order of the Tribunal and stated that the vehicle was the DCM Toyota and its weight was 7780 kilogram. The minimum weight of the heavy motor vehicle comes to 12,000 kilogram. It is much below to heavy motor vehicle, so it can be treated as the light motor vehicle. He also stated that pertaining to the validity of the license, no plea was taken before the Tribunal. The Insurance Company is taking this plea for the first time in this Court. He relied on the ratio laid down in National Insurance Co. Ltd. v. Swaran Singh and Ors. 2004 (2) AWC 1589 (SC) where it was observed that the driver was having the license of one type of vehicle but he was driving another type of vehicle, nonetheless the insurer cannot be allowed to avoid its liability merely for technical breach of conditions

on driving license.

9. We have heard the learned Counsels for both the parties and gone through the material available on record.

10. It appears that the deceased child died due to accident occurred on 3.1.1999 by the DCM Toyota No. UP 78, N-8706. This is the admitted case of the parties that the weight of DCM Toyota is 7780 kilogram. Light motor vehicle must be about 7,500 kilogram as per Section 2(21) of the Motor Vehicles Act, 1988. The heavy motor vehicle must be having minimum weight 12,000 kilograms as per Section 2(16) of the Act. There is no independent license for the medium motor vehicle. The weight of DCM Toyota is very near to light motor vehicle, therefore, it cannot be considered heavy motor vehicle. Further from the record, it appears that no specific plea was taken by the Insurance Company before the Tribunal. Pertaining to the driving license of light motor vehicle and heavy motor vehicle, the Tribunal in its order in Issue No. 3 has clearly observed that the driving license of Sri Ashok Kumar was produced which was valid on the date of the accident. Now it is belated to raise this plea before us. On perusal of the copy of the license of Sri Ashok Kumar (page No. 21), it appears that he was having the valid license since 7.11.1976. On 7.6.1999, the driving license was endorsed by the Transport Department on heavy good vehicle w.e.f. 19.7.1997 to 6.6.2002. Thus, it appears that he was holding a valid license for heavy good vehicle. Moreover, in the case of Swaran Singh (supra), the Hon'ble Supreme Court observed as under:-

87. 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 Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in Sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a license for one or more of them are (a) motorcycle without gear, (b) motorcycle 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 "good 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". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licenses arise for consideration before the Tribunal. A person possessing a driving license for "motorcycle 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 "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case on evidence led before the 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 failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer merely for technical breach of conditions concerned driving licence.

88. We have construed and determined the scope of Sub-clause (ii) of Sub-section (2) 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.

11. Pertaining to the compensation, it appears that the deceased was aged about 6 years. The parents of the deceased (claimants) were in the age of group of 32-35 years. The Tribunal has taken the notional income of Rs. 15,000/- per annum by deducting only 1/3 as expenditure. The Tribunal has taken Rs. 10,000/- per annum for the purpose of computation. The Tribunal has rightly applied multiplier "17" by looking the age of child. Thus, the compensation was rightly determined 1,70,000/- and Rs. 2,000/- for funeral expenses. Thus total Rs. 1,72,000/- was awarded. The claimants are not before this Court for enhancement of the compensation. In these circumstances, the application of multiplier cannot solely depend on the age of the deceased as per the ratio laid down by the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, Hence, we uphold the impugned order of the Tribunal along with the reasons mentioned therein.

12. Needless to mentioned that there are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

13. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with

reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

14. In the light of above discussions, we find no reason to interfere with the impugned order of the Tribunal and the F.A.F.O. is devoid of merits.

15. In the result, the F.A.F.O. is hereby dismissed.