(2008) 03 UK CK 0019

In the Uttarakhand High Court

Case No : A.O. No. 269 of 2003

The New India Assurance Company Ltd. APPELLANT

Vs

Jagdish Chandra Suyal and Another RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3

Citation : (2008) 03 UK CK 0019

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

Bench : Single Bench

Advocate : Tanveer Alam Khan, for the Appellant; G.C. Kandpal and P.C. Danu, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988, has been preferred by New India Assurance Company, against the judgment and award dated 3-7-2003, passed by Motor Accident Claim Tribunal/District Judge, Udham Singh Nagar, in M.A.C.T. Case No. 277 of 1999, thereby awarding compensation of Rs. 32,161/- along with interest @ 12% per annum payable by New India Assurance Company.

2. Briefly facts giving rise to this appeal are that on 24-4-1999 the claimant/ Respondent No. 1 was going to Nandpur from Haldwani by a bus and at about 12 noon, when he got down from the bus at Sardar Nagar Moar, suddenly the Scooter bearing registration No. U.P. 04-B/3575 coming from Kashipur side in a rash and negligent manner, dashed him due to which he got bone fractures at his left hand and right leg. According to the claimant he spent about Rs. 45,000/- on his treatment and he also sustained a loss of Rs. 28,000/- in his agricultural profession. Therefore, he claimed Rs. 1,50,000/- as compensation.

3. The owner of the offending Scooter Opposite Party/Respondent No. 2 filed his written statement alleging therein that the scooter was insured with New India

Assurance Company and the liability to pay compensation is upon the Insurance Company.

4. The Opposite Party/New India Assurance Company also filed its written statement and alleged that there was breach of terms of policy, hence the insurer is not liable to pay any compensation. It has also been alleged that the liability of the owner does not shift on the insurer until further proof of registration certificate, fitness certificate, road permit and all taxes paid and are in favour of the insured and that he had allowed the said motor vehicle having been driven on the public place by a person holding a valid and effective driving license for the specified vehicle and that he was not disqualified to drive.

5. The learned Tribunal on the pleadings of parties, framed the following issues in the petition:

1-Whether on 24-4-1999 at about 12 noon at Sardar Moar the driver of Scooter bearing registration No. U.P. 04-B/3575 dashed the claimant after driving the scooter in a rash and negligent manner, due to which the claimant was serious injured? If so its effect?

2-To what amount of compensation, if any, the claimant is entitled to get and from whom?

6. Parties led evidence before the learned Tribunal in support of their allegations. The Tribunal after having perused the material on record and hearing learned Counsel for the parties, awarded a compensation of Rs. 32,161/- along with interest @ 12% per annum from the date of presentation of petition till final payment, payable by New India Assurance Company.

7. Feeling aggrieved, the New India Assurance Company has preferred this appeal before this Court.

8. Heard learned Counsel for the parties and perused the record.

9. Sri T.A. Khan, learned Counsel for the Appellant has submitted that the offending vehicle at the time of accident was being driven by a person who had a learner''s licence and the requirement of Rule 3 of the Central Motor Vehicle Rules, 1989, were not complied with, therefore, breach of condition of insurance policy was committed and the Insurance Company cannot be held liable to pay the compensation.

10. The learned Counsel in support of his submission has cited before me the case of New India Assurance Company Ltd. v. Mandar Madhav Tambe and Ors. reported in 1996 (1) T.A.C. 506 (S.C.). In the above cited case the Hon''ble Apesx Court has held that the learner''s licence would not be regarded as "duly licenced" and the Insurance Company would not be liable for compensation.

11. The learned Counsel for the other side has submitted before me that the Hon''ble Apex Court in the recent judgment reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , has held that the learner''s licence is also a

valid licence. In the cited case the Hon''ble Apex Court has held as under:

93. The Motor Vehicles Act, 1988, provides for grant of learner''s licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner''s licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not "duly licenced" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner''s licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner''s licence, the same would run counter to the provisions of Section 149(2) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence, which is otherwise a learner''s licence. Section 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence. Section 7 deals with such restrictions on granting of learner''s licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner''s licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner''s licences granted in terms of the statute. A person holding learner''s licence would, thus, also come within the purview of "duly licenced" as such a licence is also granted in terms of the provisions of the Act and the Rules framed there-under.

12. The Swaran Singh''s decision (supra) has been further followed by the Hon''ble Apex Court in the case of National Insurance Co. Ltd. Vs. Bhagwani and Others, and the appeal of National Insurance Company was dismissed.

13. In the instant case the learner''s licence was issued from 3-12-98 to 2-6-99 and thereafter on 11-6-1999 another licence was issued in favour of the driver Dharam Chandra which was valid upto 10-6-2019. Therefore, in the facts and circumstances of the case and following the recent view of the Hon''ble Apex Court taken in the above cited cases, the submission raised by the learned Counsel for the Appellant has no force. It is held that the driver of offending scooter was having a valid licence and the Insurance Company cannot be exempted from its liability to pay the compensation.

14. For the above reasons, the appeal lacks merit and is liable to be dismissed.

15. Accordingly, the appeal is dismissed. The impugned judgment and award is confirmed. No order as to cost.

16. The amount of compensation, if any, deposited before this Court, be remitted to the Tribunal concerned to be paid to the claimant/Respondent.

