

(1989) 08 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 9 of 1984

The New India Assurance Company Ltd.

APPELLANT

Vs

Vijay Kumar and Others

RESPONDENT

Date of Decision : 31-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Motor Vehicles Act, 1939 — Section 96

Citation : (1991) 1 ILR (P&H) 427

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; R.K. Battas, Anjali Kapur for Respondent Nos. 1 and 3 and S.K. Lamba, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The New India Assurance Company Ltd. has assailed the award of the Motor Accident Claims Tribunal allowing claim application for award of compensation. Respondent No. 2 (hereinafter referred to as the claimant) moved the Tribunal for awarding of compensation on the following grounds:

2. On February 28, 1980 the claimant was driving his friend's scooter bearing registration No. DHH-245 and was on his way to Command Hospital from Chandi Mandir side. He negotiated a right turn after giving a proper hand signal. The traffic lights showed green signal for him. As he turned towards Sector 28? Respondent No. 1 Vijay Kumar who was riding a Yezdi motor cycle bearing registration No. CHG-8078 hit him. As a result he fell down and sustained injuries. He was removed to the Hospital in a passing military vehicle. He suffered fractures of medical malicous and fracture of 5th meta-carpal left hand. He remained in the Hospital from February 28, 1980 to March 14, 1980. His wife escaped with minor injuries.

3. The claim petition was contested by the Appellant and Respondent No. 1. They have filed separate written statements, but the pleas are almost identical,

Respondent No. 1 pleaded that he was proceeding on the road from the side of the Tribune towards Timber-market. He was on the left side of the road. When he reached the crossing of the Petrol Pump he noticed green light and proceeded straight on. After he had covered 3/4th of the crossing the claimant came from the Industrial Area and suddenly took a turn when the signal of the light was red and struck against his motor cycle. The accident took place as a result of the negligence of the claimant when he entered the crossing on the main road when the signal was red and did not care to find out if there was traffic on the main road. The contesting Respondents did not dispute that the motor cycle involved in the accident was insured with the Appellant.

4. On the pleading of the parties, the following issues were framed:

(1) Whether the accident took place due to rash and negligent driving of motor cycle No. CHG 8078 driven by Respondent No. 1 resulting in the injuries to the claimant? O.P.P.

(2) To how much compensation is the claimant entitled- to and from which of the Respondents? O.P.P

(3) Belief.

5. The Tribunal on appreciation of the evidence gave a firm finding that the accident was caused as a result of rash and negligent driving of the motor cycle by Respondent No. 1, However, the tribunal held that Respondent No. 1 did not have driving licence on the date of the accident. Under issue No. 2, the Tribunal held that the claimant is entitled to recover Rs. 16,940 by way of compensation.

6. In appeal, the Learned Counsel for the Appellant did not dispute the accident or the manner in which it had taken place. He also did not dispute the quantum of compensation granted to the claimant. He only questioned that the award could not be passed against the Assurance Company for the reasons that Vijay Kumar Respondent No. 1 did not have a valid driving licence on the date of the accident.

7. On scrutiny of the evidence produced on record, I find no substance in the submissions of the Learned Counsel.

8. The written statements on behalf of Respondents Nos. 1 and 2 were filed through the same counsel. Respondent No. 1 did not plead in his written statement that he had no driving licence on the date of the accident. However, Respondent No. 2 in para 25 of the written statement pleaded thus:

That the replying Respondent is not liable as Respondent No. 1 held no licence and in case the insured has not been made a party and in his absence u/s 96 of the Motor Vehicle Act, the Company has no liability.

9. The contents of the written statement were verified to the best of the knowledge and belief of the person verifying. It is not decipherable from the written statement that the person who verified the written statement was

competent to do so. The written statement has to be verified under Order 6 Rule 15 (As amended by the Punjab and Haryana Amendment) of the Code of Civil Procedure. It has to be verified with reference to the numbered paragraphs of the pleadings and the person verifying has to state what portion he verifies from his own knowledge and what portion on information received and believed to be true. A verification is a matter of great importance. The verification does not reveal that on what basis the person verifying had made the averments in the written statement. The written statement filed by the Appellant will not be deemed to be correctly verified and it is no written statement in the eye of law. Be that as it may be, the perusal of the file reveals horrible state of affairs. Respondent No. 1 appeared at the trial as his own witness and in examination-in-chief, he stated that he had a valid driving licence at the time of the accident. The Assurance Company did not cross-examine him on this point. The only question put to him was where was the driving licence and the witness stated that it was with the police. His statement that he had a valid driving licence was never challenged in cross-examination. No suggestion was ever put to him that he did not have a valid driving licence. It is well settled rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. If no such questions are put the Courts presume that the witness' account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an Opportunity of giving an explanation. In the light of this it has to be assumed that this part of the evidence of this witness that he had a valid driving licence was never challenged in cross-examination and an inference can be drawn that the witness' statement that he had a valid driving licence was accepted as correct.

10. The Appellant led evidence to prove that Respondent No. 1 did not have a valid driving licence. The contesting Respondents, through their counsel, summoned the following witnesses at the trial:

(i) Clerk concerned, office of the Licensing Authority, U.T. Chandigarh, through Deputy Commissioner, Chandigarh, along with application for Vijay Kumar s/o Kulwant Rai, H. No. 2177/37, Chandigarh, on the basis of which driving licence No. 102 and valid upto 12th April, 1980 was issued in his favour. He should also bring the relevant register showing the entry of the issuance of the said licence.

(ii) Shri Vijay Kumar s/o Shri Kulwant Rai c/o Vee Kay Electricals, SCO 30/23-C, Chandigarh to bring his driving licence.

(iii) Shri T.C. Gupta, Executive Magistrate,-cum-Registering Authority, Chandigarh, along with file concerning driving licence No. CH-102 valid upto 12th April, 1980 in the name of Vijay Kumar son of Kulwant Rai House No. 2177/34-C, Chandigarh, including the entry with regard thereto in the relevant register in the office.

Shri T.C. Gupta, Executive Magistrate-cum-Registering Authority, Chandigarh appeared in Court but he was not examined. The Reader to the Sub Divisional Magistrate, Chandigarh, Mohd. Akram was examined as RW.4. He stated that an entry existed in the summoned register at Sr. No. 102 of the register according to which a licence for scooter was issued in favour of Vijay Kumar son of Kulwant Rai, the validity of the licence was from April 13, 1977 to April 12, 1980. This witness who was examined by Respondent No. 1 was cross-examined by the counsel for the Assurance Company but nothing was extracted to discredit the testimony of this witness. It is clear from the evidence of this witness that Respondent No. 1 had a valid driving licence for the period April 13, 1977 to April 12, 1980. The accident took place on February 28, 1980. I cannot help mentioning that the Respondents did try to twist the evidence but they failed in their attempt. Respondent No. 1 through his counsel summoned Shri T.C. Gupta, with record relating to the grant of driving licence in the name of Vijay Kumar son of Kulwant Rai, resident of House No. 2177/34-C, Chandigarh. Respondent No. 1 did not reside at the address. In the claim application, it was shown that he was residing in Sector 37, Chandigarh and it was never disputed that his address was not correctly mentioned but in the application for summoning the witness, it was mentioned that Vijay Kumar son of Kulwant Rai was a resident of House No. 2177 Sector 34, Chandigarh. At the evidence stage, the contesting Respondents in collusion with each other did make an attempt to prove that Respondent No. 1 did not have a valid driving licence which they miserably failed. Their conduct deserved to be deprecated. It is not expected of the Appellant to contact something which is not in existence. The clumsy attempt was to defeat the claim of the Appellant. If Respondent No. 1 did not have a valid driving licence on the date of the accident, the Assurance Company is not liable for the compensation. The law was well settled by the apex Court and the evidence was being twisted to bring the case of the Assurance Company within the ambit of the Apex Court judgment reported as *Narcinva v. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors.* 1985 A.C.J. 397. I hope that the Assurance Company will act fairly and not in the manner it has done in the instant case.

11. For the foregoing reasons, this appeal is dismissed with costs. Counsel fee assessed at Rs. 1000 which will be payable to the claimant alone. Cross-objections were not pressed and are dismissed accordingly.