

(2017) 03 AHC CK 0073

In the Allahabad High Court

Case No : First Appeal From Order No. 504 of 2014

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Daya Devi

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 103 (1A), Section 130(3), Section 149, Section 157, Section 168, Section 169(1), Section 169(2), Section 2(30), Section 217(2)(b)
Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 212

Citation : (2017) 4 ADJ 778

Hon'ble Judges : Attau Rahman Masoodi, J.

Bench : Single Bench

Advocate : U.P.S. Kushwaha, Advocate, for the Appellant; Akhter Abbas, Km. Vishwa Mohini and Sarvesh Kumar Pandey, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Attau Rahman Masoodi, J.— Heard Sri U.P.S. Kushwaha, learned counsel for the appellant and Sri Akhter Abbas, learned counsel who has put in appearance on behalf of UPSRTC. Sri Sarvesh Kumar Pandey, learned counsel represented the claimants respondents no. 1 and 2. Respondents no. 3 and 4 have remained unrepresented, despite service being sufficient.

2. Sri U.P.S. Kushwaha, learned counsel in the present appeal questioning the correctness of impugned judgement and award rendered by Motor Accident Claims Tribunal in MACP No. 12/2013, has essentially argued on the question of fixation of liability by the Tribunal upon the insurer and has thus challenged the validity of impugned award on the ground that the Tribunal while adjudicating upon the case has adopted an invalid procedure which is beyond the scope of Motor Vehicles Act, 1988 (hereinafter referred to as the Act).

3. Insofar as the ground of procedure adopted by the Tribunal is concerned, it was argued that invariably Motor Accident Claims Tribunals entertain examination-in-chief through affidavits which is not permissible as per the

provisions contained in U.P. Motor Vehicles Rules, 1998 when read in the light of Section 169 (1) and 169 (2) of the Act.

4. Learned counsel for the appellant while inviting attention of this Court to Rule 212 of the U.P. Motor Vehicles Rules, 1998 in the light of Section 169, has submitted that once the statutory rules prescribe a particular mode of entertaining and recording evidence, there is no scope left for the Tribunal to record evidence in any manner except as prescribed.

5. To appreciate the argument so advanced, it would be necessary to refer to Section 169 of the Act as well as the Rule-212 mentioned above, which for ready reference are extracted below:

"169. Procedure and powers of Claims Tribunals.-

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry."

"Rule 212. Method of recording evidence.- The Claims Tribunal shall, as examination of a party or a witness proceeds, make a brief memorandum of the substance of what is deposed and such memorandum shall be written and signed by the Claims Tribunal and shall form apart of the record:

Provided that the evidence of any medical witness shall, as nearly as may be, be taken down word for word :

Provided further that where the claims tribunal is unable to make a memorandum it shall cause the reason of such inability to be recorded and shall cause the memorandum to be made in writing from its dictation."

6. Learned counsel for UPSRTC, on the other hand, at the very threshold of his arguments in reply, placed reliance upon a Full Bench judgement of this Court in the case of National Insurance Company Ltd. v. Smt. Pushpa Devi and others, 2016 (11) ADJ (LB) (FB), wherein the Court has elaborately dealt with the issue as to the procedure which is applicable and may be adhered to, while adjudicating upon the claims instituted before the Tribunals. Para-21 of the Full Bench judgement being relevant is extracted below:

"21. Thus, we are of the opinion that the examination-in-chief on affidavit is permissible at the discretion of the Tribunal, subject to any objection being raised by the defendants, which would require a decision thereon by the Tribunal. As far as cross-examination and reexamination are concerned, same are not permissible on affidavit and have to take place before the Tribunal. It is further clarified that in the absence of any objection before the Tribunal regarding the examination-in-chief on affidavit, no challenge to its award would be permissible in an appeal filed under Section 173 of the Act, 1988 before the High Court. The reference is answered accordingly."

7. The Full Bench judgement is a binding precedent and having regard to the principle of stare decisis, taking a contrary view on the issue would not be permissible. The Court, however, would take note of the fact that the procedure so adopted by the Tribunals does not violate the mandate of law as envisaged under Section 169 (1) and (2) of the Act and by adopting such a procedure, the course of trial would remain summary. Once the affidavits for examination-in-chief are filed and entertained, it is open to the parties to cross-examine a witness, therefore, there is nothing objectionable about such a procedure even if the corresponding provisions of CPC may not be applicable.

8. The next submission advanced before this Court is on the question of validity of permits issued to UPSRTC under the old Act where under the newly purchased motor vehicles though insured in the name of registered owners are plied under Section 103 (1A) without disclosure of the number of vehicles thereon. Non-compliance of new Rules in relation to such vehicles, according to the learned counsel, would constitute a breach of Section 149 (2) of the Act. Consequently, the fixation of liability upon the appellant would be impermissible being violative of the mandate of law.

9. This aspect of the matter was also considered in a recent judgement rendered by this Court in FAFO (Def.) No. 236 of 2013 (The oriental Insurance Co. Ltd. v. Smt. Jantual and others decided on 27.2.2017. It has been held by this Court that the old permits by virtue of Section 217 (2)(b) of the Act are to be treated as valid for the purposes of plying vehicles under Section 103(1A) of the Act insofar as its application within the State of U.P. is concerned. Section 103 (1A) and 217(2)(b) may be reproduced hereunder:

"103 (1A) It shall be lawful for a State transport undertaking to operate on any route as stage carriage, under any permit issued therefor to such undertaking under sub-section (1), any vehicle placed at the disposal and under the control of such undertaking by the owner of such vehicle under any arrangement entered into between such owner and the undertaking for the use of the said vehicle by the undertaking."

217(2)(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act

had not been passed."

10. It may be noted that the issuance of permit and cover of insurance are two independent areas regulated under the Act. Relevant particulars of the permits as per old Rules can be gathered from the prescribed format as under:

Form IV

Part "A"

"Permit No.....

1. Name and designation of the Authority to whom thepermit has been issued

2. Date of issue.....

2. No. of vehicles.....

Seating capacity Payload

Particulars of notified route or area covered

(1)

(2)

(3)

Designation and Official Seal of the Issuing Authority.

PART"B"

(To be kept with the bus)

Form of permit.

Permit No.

1. Name and designation of the Authority to whom the permit has been issued.....

2. Date of issue.....

3. Route or area covered by this permit.....

Designation and Official Seal of the Issuing Authority."

11. New Permits as per the provisions of the Act and Rules framed in the year 1998 prescribe the format of permits granted to UPSRTC as under:

Form SR-47

[Sec. Rule 130 (3)]

Permit in respect of State Transport Undertaking Vehicles

PART A

Permit No.....

(1) Name and designation of the authority to whom the permit has been issued.....

(2) Date of issue.....

(3) No. of vehicle.....

Registration No. of individual vehicle

Seating capacity/ payload

Particulars of notified route or area covered by this permit and the details of permit and registration number

1

2

3

Designation and official seal of the Issuing Authority

Part B

(To be kept with the vehicle)

Permit No.....

1. Name and designation of the authority to whom the permit has been issued.....

.....

2. Date of issue

3. Route or area covered by this permit.....

Designation and official seal of the Issuing Authority"

12. The argument in the light of details contained in the two categories of permits is that the new Rules, as per requirement of Rule 130 (3) applicable to UPSRTC, mandates the permit to be in the prescribed form i.e. SR- 47. Simultaneous operation of old and new permits on two different principles according to the learned counsel for the appellant is objectionable and violative of law. It is urged that there is enough scope for UPSRTC to ply the vehicles beyond the permissible strength mentioned on the permit and yet the insurance company would be liable to pay.

13. It is worthy to note that the Motor Vehicles Act, 1988 does not provide for the renewal of old permits but the permits so issued are protected as if the new law had not come into force. As per the format of old permits, it is the total

number of vehicles mentioned on a permit that can be plied but mention of vehicle number on the permit possessed by the driver is not necessary.

14. This court in the present proceeding is not dealing with the validity of law. The statute itself has made the old permits operative as if the new law had not commenced, thus the contention raised by learned counsel on this ground alone, does not succeed in view of the decision rendered by this Court on 27.2.2017 in FAFO (Def.) No. 236 of 2013 (The Oriental Insurance Co. Ltd. v. Smt. Jantual & 5 Others). Suffice it to say that the new Rules would not override the mandate of Section 217(2)(b) of the Act.

15. The submission advanced by learned counsel for the appellant was also scanned in the light of written statement filed before the Tribunal where no such objection was either taken or pressed before the Tribunal. It is well settled that the appellate jurisdiction of this Court is to be exercised by looking into the material which is available on record before the court below. The submission advanced by learned counsel for the appellant can not be gone into so long as evidence is not led before the Tribunal which has escaped attention of the Tribunal.

16. There is absolutely no evidence to show that the strength of vehicles marked on the permit as possessed by the offending bus driver had transgressed any such condition, being it provided in the insurance policy. The insurance policy merely provides for a permit issued under the Motor Vehicles Act, 1988, thus a contention raised on a hypothetical basis cannot be entertained.

17. The contention of UPSRTC that the new permits are issued as per the new Rules and the buses plied on the basis of old permits cater public need and do not indulge into any violation of law unless proved to the contrary cannot be doubted. The contention of insurer on the other hand is devoid of merit so long as a satisfactory proof of violation of permit on the basis of time table, period of permit or any cogent evidence on a particular day and particular route violating the condition of permit by plying excess number of buses as compared to the figure mentioned in the permit is not proved but in the instant case there is no such averment or proof.

18. Insofar as the liability under the cover of insurance policy is concerned, UPSRTC steps into the shoes of owner by virtue of Section 2 (30) of the Act, hence the appellant in view of the operation of Section 157 of the Act as held by the apex court in the judgement reported in (2011) 8 SCC 142 (Uttar Pradesh State Road Transport Corporation v. Kulsum and others), becomes liable to pay. This position has also been clarified in the judgement of this Court rendered in FAFO (Def.) No. 236 of 2013 (supra). The ground of breach of policy on the ground of lack of valid permit thus fails and the appeal bereft of any merit, deserves to be dismissed.

19. No other ground was urged by the appellant.

20. FAFO is accordingly dismissed. No order as to cost.