
(2008) 09 DEL CK 0292

In the Delhi High Court

Case No : MAC App. No. 189 of 2008

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Rajindri and Others

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 145, 147(3), 149(2), 170

Citation : (2008) 09 DEL CK 0292

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Madhurendra Kumar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") against the award dated 11.12.07 passed by Sh. J.P.S. Malik, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal"), New Delhi.

2. Brief facts of the case are that on 1.8.99 deceased Beer Singh @ Billoo was coming from his farm house on two wheeler scooter and at about 1.40 pm, when he reached at Sant Yoga Ashram, Fatehpur Beri, Delhi, he was hit by tempo No. DL-1L-C-9634 which was being driven by respondent No. 6 herein, in a rash and negligent manner, came from the side at Sant Yoga Ashram. It is alleged that deceased fell down on the road because of the impact and sustained grievous injuries. He was removed to AIIMS Hospital, where he was diagnosed having suffered fracture of left tibia severe head injuries.

3. It is further stated that deceased was again admitted at Vimhans Hospital, Nehru Nagar, New Delhi where he remained admitted up to 09.08.99 and treatment continued even after discharge of the deceased from the hospital and he ultimately succumbed to the injuries on 17.07.2000.

4. The claimants filed the claim petition against the respondent No. 6 herein being the driver of the offending vehicle, respondent No. 7 herein, being the

owner of the offending vehicle and appellant herein, as the offending vehicle is insured with them.

5. Notice of the petition was issued to all three i.e. respondent No. 6, respondent No. 7 and the appellant.

6. After appearing once, respondent Nos. 6 & 7 stopped attending the proceedings and were proceeded ex parte on 11th July, 2002.

7. Appellant in its written statement took the preliminary objection that the driver who is alleged to be on the wheels at the time of accident was not possessing an effective driving licence for the type of vehicle alleged to have been involved in the accident. On merits, all the allegations made in the petition were denied. However, the factum of insurance has been admitted.

8. Vide impugned judgment, the Tribunal awarded compensation of Rs. 4,45,703/- along with the interest @ 9% per annum from the date of filing of the petition i.e. 30.09.2000 till its realization in favour of the claimants.

9. On 23.04.08, this appeal was listed for hearing and in the meanwhile, a caveat has been filed on behalf of respondent Nos. 1 to 5 and the matter was adjourned for 21.08.08.

10. On 21.08.08, counsel for the appellant was present but none was present on behalf of respondent Nos. 1 to 5.

11. The matter was passed over once. On the second call, none was present on behalf of respondent Nos. 1 to 5.

12. Arguments advanced by learned Counsel for the appellant were heard.

13. It is contended by learned Counsel for the appellant that the driver of the offending vehicle did not have a valid and effective driving licence to drive LTV and there was no endorsement in the said driving licence to that effect. The word "LTV" was added to the license of the driver/respondent No. 6 on 23.08.99 after the accident took place on 01.08.99. Thus, the driver did not possess a valid driving license to drive a LTV on the day of the accident which clearly exonerates the insurer from any liability.

14. It was well established before the Tribunal by the testimony of the PW-2, Chaman Lal that the deceased, Beer Singh sustained grievous injuries and died in a road accident caused due to rash and negligent driving of Tempo by Respondent No. 6.

15. The testimony of PW-2 has not been challenged as regard the circumstances in which the accident had taken place and injuries were received by the deceased.

16. Section 2(47) of the Act defines the term "transport vehicle" as under;

"transport vehicle" means a public service vehicle, a good carriage, an educational institution bus or a private service vehicle;

17. Section 2(21) of the Act defines the term "light motor vehicle" as under;

"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.

18. A plain reading of Section 2(21) of the Act shows that "light motor vehicle" includes a "transport vehicle" but it nowhere says that "transport vehicle" also includes "light transport vehicle". Further, a "transport vehicle" has been defined in Section 2(47) of the Act as above.

19. Sub-section (10) of Section 2 of the Act defines "driving licence" as under;

"driving licence" means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

20. Section 10 of the Act prescribes form and contents of licences to drive, which reads as under;

10. Forms and contents of licences to drive---

(1) Every learner's license and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

21. This provision shows that for driving transport vehicle a person needs to have a licence of that category.

22. As per statement of R3W2, Pradeep Kumar, clerk from the office of SDM, Gurgaon, he has deposed that driving licence copy of which is Ex. R3W1/6, was issued on 10.03.98 and was valid up to 09.03.03.

23. The case of the Appellant is that the driver of the offending vehicle was not in possession of a valid driving licence. The driving licence issued to the driver was

only for motorcycle/car/scooter/jeep and the word "LTV" was added later.

24. The Tribunal on this point has held as under;

The only issue is that word "LTV" was added in the licence on 23.8.99, otherwise it was valid for motorcycle/car/scooter/jeep. The vehicle No. DL-1L-C-9634 being driven by R1 was Tata Tempo 407 but even before LTV was added to the licence of R1, the driving licence was valid for driving motorcycle/car/scooter/jeep and it can not be said that non-possession of driving licence to drive LTV, was in any way responsible for causing the accident. R1 had the necessary skill to drive the vehicle in question and as such, R3/Insurance company being the insurer cannot avoid its liability on the basis of technicalities

25. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Apex Court has observed as under;

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 the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

The Apex Court further in paragraph 47 of the judgment, held that;

If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

In paragraph 48, the Apex court has observed as under;

Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2) (a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

The Apex court has observed as under;

Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be.

26. In *Hardayan Singh Vs. Chiranji Lal and Others*, Punjab and Haryana High Court has observed as under;

Once, a licence can be granted by virtue of provisions contained in Section 10 only with regard to kind of vehicles or type of vehicle, enumerated therein, the mere fact that in the licence of appellant scooter/ motor cycle/ car/ jeep were mentioned, would be of no consequence. It shall be considered to be driving licence for a Light Motor Vehicle and tempo, as per definition of Light Motor Vehicle, as contained in Section 2(21) of the Act of 1988, would be a light motor vehicle. The definition of Light Motor Vehicle apart, it does not sound to reason even otherwise that a person, who is issued a valid licence to drive a car/ jeep, could not drive a tempo. There is no special training that may be required to drive a tempo which may be different in material details for driving a jeep/ car. The mechanism of all these vehicles is practically same. The distinction in driving various kinds of vehicles and grant of licence thereof is primarily when such vehicles are different in mechanism and require different kind of training.

27. Here, in the present case, the driver was admittedly holding a valid driving licence for light motor vehicle.

28. Other argument advanced by learned Counsel for the appellant is that no direct nexus has been established on record between the deceased's death and the injuries alleged to have been received by him in a road accident, since accident took place on 1st August, 1999 whereas deceased died on 17th July, 2000.

29. This plea of the counsel for the appellant is liable to be rejected at the outset, since this defence was nowhere pleaded in the written statement filed by the appellant in the Tribunal.

30. Moreover, it goes to the merit of the case and appellant/Insurance Company is not entitled to plead this defence in view of Section 170 of the Act.

31. Admittedly, no application u/s 170 of the Act was filed by the appellant before the Tribunal. Further, at the time of filing of this appeal, it has been mentioned by the appellant that;

Order u/s 170 of the MV Act is not required to be filed as we have not challenged the quantum of compensation.

32. Nevertheless, the Tribunal has dealt with this issue also in its judgment while deciding issue No. 1 and I do not find any reason to disagree with the findings of the Tribunal. On this point, it has been held by the Tribunal that;

This is clear from Ex.PW2/A-1 to the effect that no beds were available in the Neurotrauma Department of AIIMS Hospital and the patient was referred to Safdarjung Hospital/RML Hospital but thereafter, deceased was treated at Vimhans Hospital and was diagnosed as having suffered head injuries with fracture of left tibia with ARDS, as per Ex.PW1/A-4. In the circumstances, I hold that the injuries received by the deceased Beer Singh in the accident on 1st August, 1999 had ultimately resulted in his death on 17th July, 2000.

33. In view of the above discussion, I hold that there is no infirmity or illegality in the impugned judgment passed by the Tribunal.

34. The present appeal filed by the appellant is without any merits and the same is hereby dismissed with costs. Costs are assessed at Rs. 5,000/-.

35. Costs be deposited by way of cheque in the name of Registrar General of this Court within four weeks from today.

36. List for compliance on 17th October, 2008.