(2017) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : 4019 of 2013

The Oriental Insurance Company Limited APPELLANT

Vs

Urmila Devi and others RESPONDENT

Date of Decision : 02-08-2017

Acts Referred:

Citation : (2017) 08 SHI CK 0002

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Jagdish Thakur, H.S. Rangra

Judgement

1. By way of this appeal, appellant/Insurance Company has challenged the award passed by the Court of learned Motor Accident Claims Tribunal-cum-Presiding Officer, Fast Track Court, Mandi, in MAC Petition No. 105/2005(87/2004), dated 08.06.2012, vide which learned Tribunal below awarded an amount of Rs. 3,06,000/- as compensation to the claimants with interest @ 6 % per annum and 1 Whether reporters of the local papers may be allowed to see the judgment? fastened the liability to compensate the claimant upon the appellant/ Insurance Company.

2. Brief facts necessary for the adjudication of the present case are that one Pyar Chand, son of claimants No. 1 and 2 and brother of claimant No. 3 died in an accident near Chimpa-Ra-Riharu near Basahi Dhar at around 2:30 a.m. on the intervening night of 07.01.2003/08.01.2003. The offending vehicle bearing registration No. HP-02-8869 was owned by Brij Lal and was being driven by Onkar Sharma. Said vehicle was insured with appellant/Insurance Company. According to the claimants, deceased had boarded the Jeep bearing registration No. HP-02-8869 at Joginder Nagar on his way to his house at village Chimahnu, which met with an accident at a place known as Chimpa-Ra-Hiharu, at a distance of about two kilometers from Bashai on account of same being driven in a rash an negligent manner by driver Onkar Sharma. The ill fated Jeep rolled down 50 feet from the road in a ravine resulting in the death of Pyar Chand on the spot.

As per the claimants, at the time of his death, the deceased was working as a Salesman in Bharat Stationeries Shop at Joginder Nagar and was earning Rs. 8,000/- per month including the income from other sources like agriculture etc. On these bases, they claimed compensation to the tune of Rs. 8,00,000/- with interest from the respondents.

3. The owner and driver of the vehicle in issue, who were respondents No. 1 and 2 before the learned Tribunal took the stand that the accident in fact occurred on account of failure of brake of the vehicle in question and not because of rash and negligent driving of the driver. It was further their stand that even otherwise the vehicle was duly insured with the Insurance Company.

4. The Appellant/Insurance Company which was respondent No. 3 before the learned Tribunal took the preliminary objection that person driving the vehicle was not possessing a valid and effective driving licence and further that deceased was traveling in the vehicle in the capacity of a gratuitous passenger and indemnity of gratuitous passenger was not covered under the terms and conditions of the policy.

5. On the basis of pleadings of the parties, learned Tribunal framed the following issues. "1. Whether Pyar Chand died in an accident as a result of rash and negligent driving of Jeep bearing registration No. HP-02-8869 by respondent No. 2 as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so, to what amount and form whom? OPP

3. Whether the driver of the alleged vehicle was not having valid and effective driving licence and thus, the respondent No. 3 is not liable to pay the amount to the petitioners as alleged? OPR-3.

4. Whether the deceased was traveling in the ill fated vehicle in the capacity of gratuitous passenger and is not covered under the terms and conditions of the Insurance Policy as alleged? OPR-3

5. Relief."

6. On the basis of evidence led by the parties, issues so framed were answered in the following manner. "Issue No. 1 :Yes

Issue No. 2 :Yes, Rs. 3,06,000/- from respondents.

Issue No. 3. :No.

Issue No. 4. :No.

Issue No. 5 :The claim petition is allowed as per operative part of the award."

7. As I have already mentioned above, learned Tribunal awarded compensation to the tune of Rs. 3,06,000/- with interest in favour of the claimants which was to be indemnified by the Insurance Company.

8. Feeling aggrieved by the award so passed by the learned Tribunal, the appellant/Insurance Company of the vehicle has filed the present appeal.

9. Primarily what stands assailed before this Court is that the learned Tribunal erred in fastening the liability of indemnification of compensation payable to the claimants upon the appellant/ Insurance Company. As per the appellant, while returning the said findings, learned Tribunal erred in not appreciating that as the driver of the vehicle was not having valid and effective driving licence as on the date when the accident took place, the Insurance Company could not have been fastened with the liability of indemnifying the claimants as insured had breached the conditions of the policy. No other point was urged.

10. I have heard learned Counsel for the parties and also gone through the records of the case as well as the award passed by the learned Tribunal below.

11. It is not in dispute that the unfortunate accident in which Pyar Chand died took place in the intervening night of 07.01.2003/08.01.2003, and the offending vehicle bearing registration No. HP-02-8869 was being driven by respondent Onkar Sharma at the relevant time. Driving licence of Onkar Sharma is on record as Ext. RW4/A. The registration certificate of the vehicle so driven by Onkar Sharma (driver) at the time when accident took place is on record as Ext. RW3/ A. A perusal of the certificate of registration demonstrates that the vehicle was registered as a Maxi Cab and its unlaiden weight as mentioned in Registration Certificate was 1460 Kgs whereas the gross vehicle weight of the same as mentioned therein was 2250 Kgs. As per driving licence Ext. RW4/A, Onkar Sharma was entitled to drive the Heavy Goods Transport Vehicle (H.G.T.V.) only.

12. On record, there is statement of one Shri Ramesh Kumar, Administrative Officer of Oriental Insurance Company, Mandi who was examined as a witness by the appellant/Insurance Company. This witness deposed in the Court that in the month of March 2002 he was posted as Administrative Officer in the Oriental Insurance Company, Mandi Division, at Mandi and the vehicle of Shri Brij Lal was insured with their company w.e.f. 21.11.2002 to 20.11.2003. He further stated that owner of the vehicle had supplied driving licence of its driver and the registration certificate of the vehicle which was marked to Dinesh Kumar Gupta, Advocate (Investigator) and as per report furnished by the Investigator, driver was not holding valid and effective driving licence and therefore, Insurance Company was not liable to pay any compensation. A perusal of his cross examination demonstrates that he had admitted therein that driving licence of Onkar Sharma was renewed w.e.f. 15.01.2003 to 14.01.2006.

13. Investigator, Mr. Dinesh Kumar Gupta, Advocate, who entered the witness box as RW2, also deposed that he had verified the driving licence of Onkar Sharma which was effective from 17.08.1998 to 16.08.2001 and that thereafter it stood renewed w.e.f. 15.01.2003 to 14.01.2006 by Registration and Licencing Authority, Sarkaghat. In his cross examination (as is also evident from the findings returned by the learned Tribunal), this witness admitted that driving

licence of Onkar Sharma was valid up to the year 2006.

14. A three Judge Bench of the Hon''ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and others (2004) 3 Supreme Court Cases 297, inter alia held in Clause (iii) of para 110 as under: "110 (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

15. The Hon''ble Supreme Court has thus held that mere absence, fake or invalid driving licence are in themselves no defences available to the insurer against either the insured or the third party. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver.

16. Owner of the vehicle Brij Lal entered the witness box as PW3 and he deposed that he was owner of the vehicle bearing registration No. HP-02-8869, on which Onkar Sharma was engaged as a driver and that he perused and inspected the driving licence of driver Onkar Sharma before engaging him as a driver and that Onkar Sharma was possessing a valid driving licence at the relevant time.

17. From the evidence on record, it cannot be inferred that any evidence was placed on record by the Insurance Company to the effect that Onkar Sharma was not possessing a valid and effective driving licence at the time when unfortunate accident took place in which Pyar Chand lost his life. It has come in the statement of RW3 that he had satisfied himself with regard to the genuineness of the driving licence of Onkar Sharma and that Onkar Sharma was possessing a valid and effective driving licence. The factum of driving licence being possessed by Onkar Sharma having been duly renewed w.e.f. 15.01.2003 to 14.01.2006 has also come in the statement of witness RW2 so produced before the learned Tribunal by the appellant/Insurance Company. Further cross examination of RW1 demonstrates that while deposing that the driving licence possessed by Onkar Sharma was renewed w.e.f. 15.01.2003 to 14.01.2006 and that previously it stood renewed on 17.08.1998 to 16.08.2001, he stated that he was not aware as to whether the driving licence was renewed from the year 2001 to 2003.

18. The Hon''ble Supreme Court in United India Insurance Co. Ltd. Vs. Lehru and others (2003) Supreme Court Cases 338 has held as under: "20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving

licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO''s, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia ''s Sohan Lal Passi ''s and Kamla ''s case. We are in full agreement with the views expressed therein and see no reason to take a different view."

19. This judgment is referred to in National Insurance Co. Ltd. Vs. Swaran Singh and others (supra), wherein the Hon''ble Supreme Court in reference to the said judgment (i.e. United India Insurance Co. Ltd. Vs. Lehru and others) in paras 99 and 100 thereof has held as under: "99. So far as the purported conflict in the judgments of Kamla (supra) and Lehru (supra) is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

100. The court, however, in Lehru (supra) must not read that an owner of a vehicle can under no circumstances has any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

20. As I have already held above, Insurance Company has failed to produce on record any cogent evidence to the effect that as on the date when the accident took place, Onkar Sharma was not possessing valid driving licence.

21. Now in this background when we peruse the findings returned by the learned Tribunal while deciding issue No. 3, in my considered view, no infirmity can be found with the same. Learned Tribunal after discussing the evidence on record as well as the law laid down on the subject by Hon''ble Supreme Court of India held and rightly so that Insurance Company could not be absolved of its liability of indemnifying the insured and compensate the claimants on the pretext that driver of the vehicle was not possessing a valid and effective driving licence as on the date of accident. In my considered view, it is not proved from the record that Onkar Sharma was not possessing a valid and effective driving licence as on the

date when the accident took place. Therefore, there is no perversity in the findings returned by the learned Tribunal whereby it has called upon the Insurance Company to pay the compensation to the claimants. Accordingly, as there is no merit in the present appeal, the same is dismissed. No orders as to costs.

