

(2014) 12 AHC CK 0002

In the Allahabad High Court

Case No : First Appeal From Order No. 195 of 1995

United India Insurance Co. Ltd.

APPELLANT

Vs

Shashi Singh and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Evidence Act, 1872 — Section 106

Motor Vehicles Act, 1988 — Section 173

Citation : (2015) 6 ADJ 78 : (2015) 111 ALR 410 : (2015) 4 AWC 3406

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : A.K. Srivastava, M.P. Sarraf and V.C. Dixit, Advocate for the Appellant; Y.K. Sinha, B.N. Tiwari, R. Sahai and Venu Gopal, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.

1. Heard Sri V.C. Dixit, learned counsel for the appellant and Sri Venu Gopal, Advocate, holding brief of Sri B.N. Tiwari, learned counsel for the claimants-respondents. This first appeal from order under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as "Act, 1988") has been preferred by Insurance Company aggrieved by judgment and order dated 8.12.1994 passed by Motor Accident Claims Tribunal/Special Judge (Additional District Judge), Varanasi in M.A.C.P. No. 62 of 1992 awarding a sum of Rs. 1,35,000/- towards compensation to the claimants-respondents holding only the Insurance Company responsible for payment of the said compensation.

2. It is contended that Tractor in question was being driven by Sri Ram Adhar son of Mohan Kumar, who did not possess any driving licence and since the insured vehicle was being driven by a person, who did not possess a driving licence or valid driving licence, the Insurance Company was not responsible for payment of any compensation since there was breach of terms of insurance. The Tribunal

formulated issue No. 5 as under:

"Whether at the time of the accident, tractor driver Ram Adhar, son of Mohan Kumar had a valid driving license or not? If so, its effect?"

3. Issue No. 5 has been discussed by Tribunal as under:

"Specific evidence of PW-2 is on record to prove that Ram Adhar Kumar son of Mohan Kumar was driving the tractor in question at the time of the accident. The witness knows opposite party No. 5 Ram Adhar from much before the occurrence, as according to the witness, this Ram Adhar used to bring sand on the tractor in that area even before this occurrence and thus he was known to PW-2 opposite party No. 5 Ram Adhar has filed written statement denying his involvement with the tractor in question at the time of accident alleging that neither he knows driving nor he has any driving license nor he was driving the tractor in question. It is noteworthy that after filing the written statement, Ram Adhar did not participate in the further proceedings of the case nor he has examined himself as a witness of opposite parties asserting the allegation made in the written statement whether he had a valid driving license at the time of the accident or not, it was for the opposite party to prove that he did not have any valid driving license at the time of the accident. The Insurance Company has not produced any evidence in this regard. The story put forward by DW-1 regarding the alleged accident is not trustworthy in as much as DW-1 was the son of the vehicle owner. As per his statement, he had stopped the tractor in Orderly Bazar at about 8-9 PM at a distance of 30 to 40 meters from the Orderly Bazar Tiraha and he was sitting in a tea shop when a scooterist came on the right side of the road and collided with the tractor, crowd gathered there and DW-1 silently escaped away from the scene. It is noteworthy in this regard that DW-1 was the driver as well as the son of the owner of the vehicle and if the vehicle was not involved in any accident, why DW-1 escaped away silently without informing the police or without putting his claim for the release of the vehicle at the Police Station concerned. The learned counsel for the claimants has argued that it was the duty of the Insurance Company to prove that the driver had no valid driving license at the time of the accident. My attention has been drawn towards the observation made in *Dularibai and Others Vs. Brij Mohan Khandelwal and Others*, . (High Court), wherein it has been observed by the Hon'ble High Court that the burden to establish that the driver has no valid license lay on the Insurance Company. Opposite party No. 5 Ram Adhar himself has not appeared before the Tribunal to assert on oath that he did not have valid driving license at the time of the accident. *Sri B.V. Kotgire v. V. Jaiwantathete*, 1993 (1) TAC 207 , also the Hon'ble High Court of Bombay has observed that if the licensed driver of the owner left vehicle in case of the cleaner and that he also left the key, these facts were sufficient to bind the Insurance Company. The aforesaid observation finds support from *Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others*, . There is sufficient evidence on records to hold that Ram Adhar was driving the tractor in question at the time of the accident, as he

was arrested on the spot by the police and the tractor itself was seized just after the accident. It is also establish on record that the tractor was insured at the time of the accident. It was for the opposite parties and particularly opposite party No. 3 to prove the fact with sufficient evidence that Ram Adhar did not have a valid driving license or the terms of the insurance policy have been breached by the owner of the vehicle or its driver. In these circumstances, it may be concluded that the opposite parties could not prove that Ram Adhar did not have valid driving license at the time of the accident and since the insurance policy was comprehensive the Insurance Company cannot escape from the liability."

(emphasis added)

4. A perusal of the aforesaid reproduction from judgment of Tribunal makes it very clear that Ram Adhar himself stated in his written statement that he does not know driving and does not possess any driving licence. The owner made no attempt to show that Ram Adhar possess driving licence. The Tribunal has recorded its finding that Ram Adhar was the driver when the Tractor in question met accident. Having said so, the Tribunal has held that onus to prove that Ram Adhar i.e. the person who was driving the vehicle at the time of accident did not possess valid driving licence or any licence whatsoever lie upon Insurance Company, in particular, and defendants in the claim petition, in general.

5. I find the aforesaid view taken by the Tribunal manifestly illegal and contrary to law laid down by this Court. Once it is found that Ram Adhar was driving the vehicle at the time of accident and Ram Adhar's own written statement was on record that neither he knows driving nor was driving the vehicle at the time of accident. at least this much is clear that there was an admission by Ram Adhar himself that he does not know driving. That be so, question of possessing a valid driving licence or any driving licence whatsoever by Ram Adhar could not have arisen to hold that Insurance Company failed to prove that Ram Adhar did not possess a valid driving licence. In such circumstances, the otherwise findings given by Tribunal, even otherwise, is manifestly illegal. Moreso, it is already settled that when Insurance Company raises a dispute about the driving licence or valid driving licence possessed by the person, who was driving the vehicle at the time of accident, onus lie upon driver or owner to show that he possess such licence and such onus cannot be shifted upon Insurance Company since it is a fact, which could have been within the knowledge of the driver himself and at the best in the knowledge of owner since he can allow a person to drive a vehicle only if such person possess a valid driving licence and not otherwise.

6. A Division Bench of this Court in National Insurance Co. Ltd. Vs. Brij Pal Singh and Another, , has held that burden to establish that driver possess valid licence is upon owner of vehicle and not upon the insurer. In paras 27 and 28 of the judgment in National Insurance Co. Ltd. v. Brij Pal Singh and another (supra), the Court has said as under:

"27.....The holding of a valid driving licence, being especially within the knowledge of the driver, the burden lay upon him to prove the said fact in view of the clear provisions of Section 106, Evidence Act, was also not considered. For the reasons indicated earlier, we are unable to accept the principle laid down in the above mentioned cases.

28. Pramod Kumar, respondent No. 2 (owner of the truck) having not produced the driving licence of the driver of the truck, it must be held that he had no valid driving licence. In view of this finding, the appellant-insurance company is not legally liable to satisfy the award given against the owner of the vehicle."

7. Further Apex Court in the case of United India Insurance Co. Ltd. Vs. Gian Chand and others, , has held, if the vehicle is being driven by unlicensed driver, Insurance Company is not liable to meet that claim of claimants and the claim petition will stand rejected against Insurance Company.

8. Recently liability of Insurance Company for compensation in a case where driving licence is found fake or driver is found without licence has been considered in United India Insurance Company Ltd. v. Sujata Arora and others, 2013 (3) TAC 29 (SC) and the Court has said as under :

"However, learned single Judge of the High Court proceeded on wrong assumption and held it otherwise giving rise to filing of the present appeal. The findings of learned single Judge that even if driver was having a fake licence, it would not exonerate the insurance company as he was not negligent in driving, are certainly erroneous. Driving without licence or with a fake licence and driving a vehicle negligently are two different aspects of the matter. Holding a valid driving licence is a requirement of law. If the vehicle was being driven by a person holding a valid licence, but rashly and negligently, is a matter of evidence. The very fact which stood established that licence of the driver Jagdish was a fake one, would completely exonerate the insurance company."

9. However, the Tribunal can, while deciding the claim petition, permit Insurance Company to pay the amount and thereafter recover the same from the owner as has been held by Apex Court in National Insurance Co. Ltd. v. Swarn Singh and others, 2004(1) TAC 321.

10. The matter does not rest here since in the case in hand, claimants have also filed their cross objection. Claimants have filed cross-objection assailing the judgment of Tribunal to the extent it has awarded compensation of only Rs. 1,35,000/-. Their contention is that compensation, if would have been computed on the well-settled legal principles, it would have been more than Rs. 9 lacs. It is contended that deceased has left behind two minor children, Asheesh Kumar Singh and Amit Kumar Singh, widow Smt. Shashi Singh, father Sri Kamta Prasad, mother Smt. Dhanraji Devi. All of them have been held dependents of the deceased as the Tribunal has decided issue No. 3 accordingly. The monthly income of deceased has been held Rs. 4,000/- per month i.e. Rs. 2,500/- from shop and Rs. 1,500/- from the agriculture. It is then held that the shop is still

running providing an income of about Rs. 2,000/- per month. The agricultural income stood lost to the extent of Rs. 1,500/- since land was sold after death of the husband of Smt. Shashi Singh. The rent of the shop is Rs. 300/- per month. Having said so, the Tribunal then said that deceased, if was providing Rs. 2,500/- per month for family expenses, the dependents are still gaining Rs. 2,000/- from shop and their financial dependency upon deceased then comes to Rs. 800/- i.e. Rs. 9,600/- per annum. The age of deceased at the time of accident on 21.2.1992 was 37% years and his mother and father were still alive. The multiplier of 15 has been applied and that is how the compensation has been determined to Rs. 1,35,000/-. It is contended that procedure followed by Tribunal is patently erroneous.

11. On behalf of claimants it is contended that Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has held that when the deceased has left the dependent numbering 4 to 6, the deduction towards personal and living expenses should be one-fourth. The following passage is relied by claimants:

"we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."

(emphasis added)

12. In the present case, admittedly number of dependents is 5, hence deduction of personal and living expenses should have been one-fourth i.e. out of Rs. 4,000/- only Rs. 1,000/- ought to have been deducted and Rs. 3,000/- should have been taken as income being provided to the family for their purposes. The Tribunal in taking such income only Rs. 2,500/- has clearly erred in law and this part of finding cannot be sustained.

13. Another aspect, which has been raised in the cross objection is about multiplier. It is said that instead of 15, it should have been 16. However, I find no force in the submission, inasmuch as, for the age group between 36 to 40, multiplier 15 has been said to apply in Sarla Verma (Smt.) and others (supra). Para 21 of the judgment, relevant for the purpose, is reproduced as under:

"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 36 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

(emphasis added)

14. Lastly, it is contended that addition on account of future prospects and compensation for loss of love and affection also ought to have been allowed, which has been completely missed by Tribunal, in the case in hand, therefore, compensation awarded is extremely inadequate and unjust.

15. I find substance in the above submission. In Sunil Sharma and Others Vs. Bachitar Singh and Others, , the Court in para 17 of the judgment, has said :

"In cases of fatal motor accidents, some amount must always be awarded by way of compensation for loss of love and affection and consortium. It is of course impossible to compensate for the loss of a life, in the present case, that of a wife and mother, in terms of money. However, we can make an attempt to do so. Accordingly we award Rs. 25,000/-for loss of love and affection and consortium."

(emphasis added)

16. In view thereof, appeal and cross objections are allowed in the manner, as above. The matter is remanded to the Tribunal to compute compensation, payable to the claimants, afresh, in the light of above directions. So far as Insurance Company is concerned, it is made clear that it is not responsible for payment of compensation merely on the ground that vehicle was insured by it. However, the compensation, as determined by Tribunal, shall be paid by Insurance Company to the claimants but it shall be entitled to recover the same from owners of vehicle in view of the law laid down in National Insurance Co. Ltd. v. Swam Singh and others, (supra).