
(2010) 07 SHI CK 0211
In the High Court Of Himachal Pradesh
Case No : FAO No. 51 of 2007

United India Insurance Company Ltd.	APPELLANT
Vs	
Smt. Rattni Devi and Others	RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2, 2(17), 2(47)

Citation : (2010) 07 SHI CK 0211

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the Appellant against the award of the Court of learned Motor Accident Claims Tribunal-II, Una, dated 4.1.2007, vide which the petition filed by Respondent No. 1 as claimant u/s 166 of the Motor Vehicles Act, was allowed and the Appellant/Insurance Company was directed to satisfy the award.

2. Being aggrieved, the Appellant has filed the present appeal.

3. Briefly stated the facts of the case are that Respondent No. 1 hereinafter referred to as "the claimant" filed claim petition u/s 166 of Motor Vehicles Act as against the Respondents and Appellant was impleaded as Respondent No. 4. It was alleged by the claimant that on 10.6.1999 she boarded bus No. HP-20-1270 from Dhussara and at about 1.30 P.M., when she was getting down from the bus, Respondent No. 2 suddenly drove the bus in a rash and negligent manner and she suffered injuries and the rear wheel of the said bus ran over the left leg, which was fractured. She was taken to District Hospital Una for treatment. A report was lodged. The Petitioner filed a claim petition for the grant of compensation.

4. Respondents denied the allegations. Respondent No. 4/Appellant took up the plea that the driver was not having valid and effective driving licence and since

the bus was being plied in violation of the terms and conditions of the Insurance Policy, they are not liable.

5. The learned trial Court framed various issues and finally concluded that the Petitioner was entitled to compensation to the extent of Rs. 40,369/- and the petition was allowed alongwith interest and the responsibility was fastened upon the Appellant.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. The only question involves and raised by the Appellant is that since there was breach of terms and conditions of the Insurance Policy as the driver was not having a valid and effective driving licence, they are not liable. The findings under Issue No. 6 recorded by the learned Tribunal have been challenged.

8. It has come up in evidence of Respondent No. 4 by the testimony of RW-1 Abhijit, a Clerk in the office of R.T.O. Nagpur (Maharashtra), who produced the record that the licence was issued in the name of original Respondent No. 1, Respondent No. 2 before me, who was having a licence to drive heavy goods vehicle and the vehicle in question was heavy transport vehicle and as such, Respondent No. 1 was not having a valid and effective driving licence. The learned Tribunal has concluded that it cannot be said that the accident was caused solely due to the fact that the driver was not possessing the requisite type of licence and as such, he also concluded that u/s 2(47) of the Motor Vehicles Act, transport vehicle means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle and, therefore, the licence was held to be valid.

9. To substantiate his submissions, the learned Counsel for the Appellant had relied upon the decision in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, In that case, it was proved that Respondent No. 6 did not hold a valid and effective driving licence for driving a goods vehicle and accordingly, it was not a valid driving licence. However, the Insurance Company was directed to deposit 50% of the awarded amount and they were held entitled to recover the amount paid from driver and owner of the vehicle. It is, therefore, clear that the facts of the above mentioned case are different since in that case the driver was not having a valid and effective driving licence for driving a goods vehicle.

10. On the other hand, the learned Counsel for Respondent No. 1 had relied upon a decision of the Full Bench of this Court in New India Assurance Co. Ltd. Vs. Dharmu and Others, It was held in answer to the question referred to Full Bench by the Division Bench, viz. whether such a person who is already possessed of an effective driving licence, authorises him to drive a particular type of vehicle.

11. It was held that endorsement authorizing him to drive a particular type of vehicle, falling within the definition of "transport vehicle" as occurring in Section 2(47) of the Act, which reads as under:

2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

12. Heavy passenger motor vehicle has been defined in Section 2(17) of the Act and reads thus:

2(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12000 kilograms.

13. It is, therefore, clear that a person possessing a licence to drive a transport vehicle is competent to drive a goods carriage, an educational institution bus or a private service vehicle. The term heavy passenger motor vehicle includes any public service vehicle or private service vehicle as mentioned above.

14. It is, therefore, clear that the definition of transport vehicle as occurring in Section 2(47), encompassing within itself all the attributes of such definition including Sub-Sections 17 and 35 of Section 2 of the Motor Vehicles Act.

15. The fact that the driver was possessing a licence to drive a heavy goods vehicle was also competent to drive a heavy transport vehicle and as such, there was no violation of the terms and conditions of the Insurance Policy as the licence in question was a valid one. The decision of the Full Bench applies on all fours to the present facts.

16. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the Appellant, which is dismissed alongwith costs including the lawyers fee assessed at Rs. 3,500/- payable to Respondent No. 1.