

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 588 of 2001

Appellant :- National Insurance Company Ltd.

Respondent :- Jagannath And Others

Counsel for Appellant :- Rajeev Mishra

Counsel for Respondent :- Adnan

Ahmad, Ravindra Pratap Singh

Hon'ble Jaspreet Singh, J.

Heard Shri Rajeev Mishra learned counsel for the appellant and Shri Adnan Ahmad, learned counsel appearing for the claimant-respondents.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 31.08.2001 passed in Claim Petition No.14 of 1994 by Motor Accident Claims Tribunal/Additional District Judge, Court No.10, Barabanki whereby in a death case a sum of Rs.2,34,500/- alongwith 9% interest has been awarded in favour of the claimant-respondents and the Insurance Company has been held to indemnify the said award.

Shri Rajeev Mishra, learned counsel for the appellant has primarily raised an issue that the Tribunal erred in returning a finding that the driver of the offending truck which was insured with the appellant Company did not have a valid licence. It noticed that this burden was on the appellant to establish and since it failed to bring anything on record, accordingly the Tribunal held that the driver was having a valid licence and had directed the award to be indemnified by the Insurance Company.

Shri Adnan Ahmad, learned counsel for the respondents, on the other hand, submits that in so far as the factum of the accident, the grant of compensation and its quantum as well as the validity of the insurance policy is concerned, there is no dispute to the aforesaid facts. Since the

appellant in its written statement had taken a plea that the driver of the offending vehicle did not possess a valid licence, then the burden was on the Insurance Company and since it failed to discharge the same. The finding has been returned by the Tribunal against the Insurance Company and it cannot be said that it suffers from any error, consequently the appeal is devoid of merits and is liable to be dismissed.

The Court has heard the learned counsel for the parties and also perused the material on record.

This Court finds that the claimants had filed a Claim Petition No.14 of 1994 with the averments that on 28.11.1993, at around 11.55 A.M., a truck bearing No.WB-37/0241 was being driven rashly and negligently and was coming on Lucknow Sultanpur Road and near village Budanapur, it hit Smt. Ganga Dai, wife of Jagannath, who died on the spot. It is in the aforesaid backdrop, the claim petition came to be contested by the Insurance Company who was the defendant no.2 and filed its written statement raising various grounds that the driver did not have a valid licence and he did not have the necessary requisite documents unless and until the same is proved, no liability can be fastened on the Insurance Company.

At this stage, it will be relevant to notice that the owner of the offending vehicle/defendant No.1, namely, Sukhdeo Singh did not file any written statement nor any evidence was led on his behalf. No document regarding the valid licence of the truck driver, namely, Kulwant Singh was brought on record.

It is in the aforesaid backdrop that the Tribunal upon the exchange of the pleadings framed seven issues.

Considering the issue No.1, it recorded a finding that the accident had occurred on account of rash and negligent driving of the truck driver. Thereafter, the Tribunal also dealing with the Issue No.3 recorded a finding that since the issue whether the licence valid or not was raised by the Insurance Company, hence, it was its burden to

discharge the same and since the same was not done, accordingly it was held that the driver had the licence. The Tribunal thereafter went on to compute the compensation and awarded a sum of Rs.2,34,500/- along with 9% interest by means of the impugned award dated 31.08.2001 which is under challenge in the instant appeal.

The parties has confined their submissions only in respect of the issue of driving licence.

Considering the material on record and noticing the reasoning given by the Tribunal while dealing with the Issue No.3, this Court finds that the reasoning of the Tribunal is completely erroneous. There is nothing on record to indicate that the driver of the vehicle, namely, Kulwant Singh had a valid and a subsisting licence. There can be no negative presumption that any person who was driving a vehicle, would be having a valid and a subsisting licence without bringing the copy of the licence on the record. It is the duty of the contesting party namely the owner, who ought to state and bring the said facts on record. It could be another thing to say that the details regarding the driving licence was furnished by the owner, then it is the duty of the insurer to verify the same. However, in absence of any details regarding the driving licence, it cannot said that the entire burden rest with the Insurance Company.

In the instant case, it is not disputed that the owner did not bring on record the driving licence nor furnished any details. As far as the insurance company is concerned, it sent several registered letters both to the owner as well as the driver but they returned unserved and there was no response to the same. In these circumstances, it cannot be said that the Insurance Company did not make any effort to substantiate and verify the fact whether the truck driver had a valid licence.

Considering the facts and circumstances, the Tribunal merely found that since the Insurance Company could not discharge its burden that the driver did not have a valid licence, it assumed that the vehicle was being driven in accordance with the policy conditions and the award was directed

to be indemnified by the Insurance Company.

Apparently, this reasoning is faulty. The motor accident claims is generally in the realm of law of torts. The primary liability of causing the accident is that of the driver and since the owner is vicariously liable, accordingly, he has to satisfy the award. It is only when the owner has a valid and subsisting insurance policy and the vehicle is being driven in accordance thereof that the insurance company is liable to indemnify the award. In case if the insurance policy is not available or valid, then primarily the responsibility to honour the award is on the owner and the driver jointly and severally.

In the instant case, apparently, the factum of insurance is not disputed. However, the issue of driving licence is the crux which is attracting the attention of this Court.

Considering the facts and circumstances that the accident occurred in the year 1993 and upon the death of Ganga Dai, the claimants who were awarded a sum of Rs.2,34,500/- along with 9% interest vide award dated 31.08.2001 and even before this appellate court, despite notice, the owner did not respond and the appeal has been heard in his absence. Consequently, this Court is of the clear view that in order to meet the ends of justice, the right of claimants may not be thwarted, accordingly, the appeal is partly allowed with the direction that the appellant company shall pay the amount as awarded with up-to-date interest and shall be granted the liberty of recovering the same from the owner in accordance with the law as laid down by the Apex Court in the case of **Oriental Insurance Company Ltd. v. Nanjappan and others, (2004) 13 SCC 224**. The amount deposited before this Court shall be remitted to the Tribunal concerned to be released in favour of the claimants-respondents and any short-fall shall also be paid by the Insurance Company to the claimant-respondents in accordance with the award within 60 days from today. Costs are made easy.

With the aforesaid modification, the award dated

31.08.2001 passed in Claim Petition No.14 of 1994 is affirmed.

The record of the Tribunal concerned shall be returned forthwith.

Order Date :- 23.11.2023

ank