

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 1126 of 2016

Appellant :- Estkar Ahmad

Respondent :- National Insurance Co Ltd Thru Branch
Manager Nainital Ors

Counsel for Appellant :- Mohan Singh

Counsel for Respondent :- Ashish Kumar Srivastava, Satendra
Nath Rai, Sunil Kumar Tripathi

Hon'ble Jaspreet Singh, J.

1. Heard Shri Mohan Singh, learned counsel for the appellant, Shri Sunil Kumar Tripathi, learned counsel appearing for the Insurance Company-respondent no.1 and Shri Satendra Nath Rai, learned counsel for the claimant-respondents.
2. A very short question is involved in the instant appeal which has been filed under Section 173 of the Motor Vehicle Act, 1988 whereby the Tribunal in Claim Petition No.139 of 2010 has passed an award of Rs.2,78,500/- alongwith 6% interest per annum fastening the liability on the owner of the truck (the appellant herein) on the ground that the truck was being plied without a permit and was also being plied against the conditions of the permit and for the aforesaid reason, the Insurance Company i.e. respondent no.1 has been absolved of its liability.
3. Shri Mohan Singh, learned counsel for the appellant has pointed out that the vehicle in question which belongs to the appellant possessed the valid permit and even the receipt regarding deposit of the permit fee was placed on the record of the Tribunal yet the same has been ignored. The appellant in order to show his bonafidies while filing the appeal had also moved an application under Order 41 Rule 27 CPC to bring on

record the permit itself. It has been pointed out that initially the appeal was preferred with an application seeking condonation of delay which was allowed by the Court on 26.11.2021. Alongwith the appeal, the appellant had also filed an application under order 41 Rule 27 CPC bringing on record the permit. The respondent was granted time to file their objections which has also been filed by the Insurance Company and as such it is urged that the appeal is ripe for hearing.

4. It is submitted by Shri Mohan Singh that the dispute is primarily as to who is liable to indemnify the award; inasmuch as the Tribunal incorrectly held that the offending truck was being plied without the necessary permit whereas the truck in question did possess all the valid documents including the permit which was valid on the date of the accident which was not appropriately considered by the Tribunal and has incorrectly fastened the liability on the owner.

5. Shri Sunil Kumar Tripathi, learned counsel appearing for the respondent no.1-Insurance Company submits that apparently the permit which has been filed by the appellant on record is subject to the terms and conditions contained in the said permit and the truck in question was being plied in clear contravention of the stipulation no.4 as contained in the permit itself and thus for the aforesaid reason the finding of the Tribunal does not suffer from any error.

6. Shri Satendra Nath Rai, learned counsel appearing for the claimant-respondents submits that in the fight between the owner and the insurer the claimants have been suffering and they have not been granted the award as passed by the Tribunal dated 02.02.2012.

7. The Court has considered the rival submissions and also perused the material on record, at the outset, it may be stated

that neither the owner nor any of the respondents dispute the factum of the accident and the involvement of the offending vehicle.

8. In so far as the findings returned by the Tribunal on the issue of negligence and the determination of compensation is concerned, they are not under challenge before this Court and accordingly, the same are accepted and are final. It will also be relevant to notice that there is no cross-appeal from the side of the claimants, accordingly the sole issue which is to be considered by this Court is who liable to indemnify the award.

9. After having heard the learned counsel for the parties and noticing that the issue relates to the permit of the offending vehicle which has been brought on record by the appellant alongwith the application under Order 41 and Rule 27 CPC. The learned counsel for the Insurance Company has got the same verified and filed his objection and considering the core issue which is in controversy. This Court finds that the said document would be vital for an effective adjudication of the appeal, consequently the court allows the application under Order 41 Rule 27 CPC and the said document shall be taken note of while considering and deciding this appeal on merits.

10. The Tribunal upon exchange of pleading had specifically framed issue no.5 to the effect as to whether the offending truck bearing number UA-04A/7723 on the date of accident was insured and was being plied in accordance with the policy conditions while deciding the said issue the Tribunal held that since the truck did not have the permit to ply in the State of Uttar Pradesh, accordingly the Insurance Company would not be liable to indemnify the award. The finding on issue no.5 is under challenge and it is submitted that the permit which has been brought on record clearly indicates that the vehicle bearing

number UA-04A/7723 is granted permit No.0467/10 dated 05.04.2010 by the Uttar Pradesh Transport Department and was valid from 05.04.2010 till 26.03.2015. It is thus submitted that on the date of the accident i.e. 08.06.2010 the permit was valid. Thus, the finding recorded by the Tribunal is patently erroneous.

11. Shri Tripathi, learned counsel for the Insurance Company has drawn the attention of the Court to stipulation no.4 as mentioned in the permit, which states that the goods vehicle entering the State of Uttar Pradesh shall not unload or load any goods within the borders of the State nor it will be involved in any intra state trade or transport.

12. Shri Tripathi, learned counsel submits that since the offending truck was coming from Bhira side i.e. in District Lakhimpur Kheri and it was not entitled to be involved in any intra state trade or transport, consequently, it was violating stipulation no.4 and thus the truck was being plied in violation of the permit condition, hence the finding on issue no.5 requires no interference.

13. Having heard the learned counsel for the parties on the aforesaid issue, this Court finds that the contention of Shri Tripathi is completely misconceived. Apparently, the truck in question did possess a valid and subsisting permit.

14. In so far as the reference to stipulation no.4 of the permit is concerned, it would be relevant to notice that this would only come into the picture if there would have been some pleadings or allegations that the offending truck in question was loading and unloading the goods and carrying it for transport within two destination within the State of Uttar Pradesh.

15. Apparently, neither it is the case of the claimants nor that of the Insurance Company to the aforesaid effect, more so the

Insurance Company did not lead any evidence at all and has tried to develop the aforesaid ground only during the course of argument without any pleading or any evidence, thus for the aforesaid reason the plea raised by the counsel for the Insurance Company is baseless and is turned down.

16. Once it is found that the offending truck in question did have a valid permit, apparently the award has to be indemnified by the Insurance Company especially when there is no dispute to the fact that the truck in question was duly insured on the date of the accident and its driver was also having a valid and a subsisting licence to drive the appropriate category of the vehicle.

17. For the aforesaid reason, this Court finds that the finding on issue no.5 given by the Tribunal requires interference, accordingly the award dated 02.02.2012 passed by the Tribunal in Claim Petition No.139 of 2010 shall stand modified only to the extent that the amount as awarded by the Tribunal shall be indemnified by the Insurance Company and not by the owner as his truck had valid permit and its driver had a valid licence and the said truck was also duly insured.

18. Subject to the aforesaid modification, all other findings and the compensation determined by the Tribunal is affirmed. Subject to the aforesaid award dated 02.02.2012 passed in Claim Petitioner No.139 of 2010 shall stand modified.

19. The appeal is **allowed** to the aforesaid extent. Any amount deposited by the appellant before this Court shall be released in favour of the appellant and the awarded sum with up-to-date interest shall be indemnified by the Insurance Company and shall be paid to the claimants within a period of 60 days, from the date a copy of this order is placed before the Insurance Company. In the facts and circumstances, there shall be no

order as to costs. The record of the Tribunal be returned forthwith.

Order Date :- 30.10.2023
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