

Neutral Citation No. - 2024:AHC-LKO:83654

AFR

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 258 of 2017

Appellant :- The New India Assurance Co.Ltd. Lucknow Thru. Manager
Legal

Respondent :- Chhedana And 2 Others

Counsel for Appellant :- Anurodh Kumar Srivastava

Counsel for Respondent :- Vinay Kumar Verma

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Anurodh Kumar Srivastava, learned counsel for the appellant and Shri Vinay Kumar Verma, learned counsel for the claimant-respondent no.1. None appeared on behalf of respondents no.2 and 3 despite sufficient service and served personally.

2. Learned counsel for the appellant-Insurance Company submits that the vehicle involved in the accident as alleged was DLIV-5126 but the Insurance Company had insured the vehicle No.DL1V-5126 and it was admitted by the owner, who appeared before the Tribunal. He further submits that the owner had also pleaded that his vehicle was in the workshop on the date of accident i.e. 24.09.2013 and it was proved by appearing himself and producing the owner of the workshop Mohd.Haseeb, but the said evidence has been discarded on the ground that in the criminal case charge sheet has been filed, whereas the evidence and material of the criminal case could not have been considered to discard the evidence adduced before the trial court without proof. He further submits that the vehicle was not having the permit on the date of accident i.e. 24.09.2013 as per copies of the permit filed by him, but the learned tribunal has wrongly and illegally held the appellant-Insurance Company liable for payment of compensation awarded by it, whereas absence of permit was

violation of the terms and conditions of the policy, therefore, the appellant-Insurance Company could not have been held liable for payment of compensation. He relies on **Chandresh Kumar Agarwal Versus Yogendra Kumar Srivastava and another; 2005 (2) TAC 6 (All.), Amrit Paul Singh and another Versus Tata AIG General Insurance Company Limited and others; (2018) 7 SCC 558 and National Insurance Company Versus Challa Upendra Rao passed in Civil Appeal No.6178 of 2004 decided on 21st of September 2004; (2004) 8 SCC 517.**

3. Per contra, learned counsel for the claimant-respondent No.1 submits that the Bus DLIV-5126 was involved in the accident. It was specifically pleaded in the claim petition and it has been admitted by respondent no.2 i.e. Aftab Alam that he is the owner of the said vehicle and he has also given the Insurance policy number in his written statement and in his evidence also. He has not denied or doubted the said vehicle. Even otherwise as per registration number of the vehicle mentioned on the policy, the vehicle number is DLIV-5126, therefore, the contention of learned counsel for the appellant is misconceived and not tenable. He further submits that the learned Tribunal, after considering the pleadings and evidence of the owner in regard to plea that the vehicle was in work shop on the date of accident, has recorded a finding that the owner has failed to prove that the vehicle was standing in the workshop for repairing of steering on the date and time of accident. Thus the involvement of the vehicle cannot be denied. He further submits that though the learned tribunal held that the vehicle had no permit was to be proved by the appellant-Insurance Company and it has failed to prove, therefore, it is liable to make the payment of compensation. However if this court comes to the conclusion that the vehicle was not having the valid permit on the date of accident, which is not against the

claimant-respondent No.1 and only right of recovery can be granted to the appellant-Insurance Company and the compensation awarded by the claims tribunal is liable to be paid by the appellant- Insurance Company, which has been deposited by the appellant before the tribunal under the order passed by this court and the same may be released and paid to the appellant. Thus the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed with costs.

4. I have considered the submissions of learned counsel for the parties and perused the records.

5. The claim petition was filed alleging therein that son of the claimant-respondent no.1 Parideen, aged about 30 years son of Chhedi Lal, resident of Village-Hamidnagar, Police Station-Safdarganj, district-Barabanki was coming back from Mahmoodabad to his house after closing his shop of Shoe making on 24.09.2013, when at Udhauli-Sirauli-Gaushpur Road near village Mahmoodabad and clinic of Dr.Shambhoo, the driver of Bus No.DLIV-5126, driving rashly and negligently hit her son, in which he died on the spot. Accordingly a compensation of Rs.12,00,000/- was claimed as he was earning Rs.40,000/- annually.

6. The claim petition was contested by the owner and driver i.e. respondents no.2 and 3 in the present appeal, who were respondents no. no.1 and 2 in the claim petition, by filing a written statement denying most of the averments. However it has been admitted that the respondent no.2 was the owner and respondent no.3 the driver of the bus. The negligence of the driver was denied. It was further pleaded that the Bus No.DLIV-5126 was standing in the workshop of Shri Haseeb Mistri at Barabanki for repairing of steering on the date of accident and the vehicle number given in the First Information Report is also some other

and since it could not be traced, the respondent no.2 and his vehicle has been implanted in collusion with the police. The appellant-Insurance Company had also filed written statement denying the averments made in the claim petition and reserving right for filing a written statement, if some material is placed on record by the other side.

7. After exchange of pleadings five issues were framed. Thereafter the evidence was adduced by the parties. After considering the pleadings, evidence and material on record, the Tribunal allowed the claim petition. The learned Tribunal, while considering the issue no.1 considered the evidence of respondent no.2, who had appeared as D.W.-1 and also evidence of Mohd.Haseeb, who appeared as D.W.-2 to prove that the vehicle was in the workshop on the date of accident.

8. Perusal of record indicates that the vehicle No.DLIV-5126 has been given in the claim petition in clause 15, 17 and in paragraph 23. In the written statement filed by the respondents no.1 and 2 i.e. the owner and driver of offending vehicle, who are respondents no.2 and 3 in this appeal, the paragraph no.15 alongwith 16 has been denied stating based on wrong facts. Paragraph 17 has not been denied and in reply thereof it has been stated that the Insurer of the bus number given in paragraph is correct and the policy number has also been given. In reply to paragraph 23, it has been stated that the same is not admitted in the manner stated and the subsequent special statements may be seen. It has further been stated by the owner of the bus that the bus number DLIV-5126 of the answering respondent was in the workshop of Shri Haseeb for repairing of steering. Thus the vehicle number has been admitted by the owner. However he pleaded that it was in workshop on the date of accident. The insurance company has also not specifically denied the number in it's written statement. However it has been

stated that the policy number of bus No.DLIV-5126 has not been given and the details of the owner of the bus have also not been given, therefore it is denied at this stage and in case the details of the policy would be informed, the detailed written statement may be filed by the appellant. Thereafter no written statement was filed, rather the Insurance policy was placed on record by the appellant-Insurance Company itself alongwith the application dated 10.11.2016. The insurance policy indicates the registration number DLIV-5126 of the vehicle.

9. The vehicle number mentioned on the insurance policy indicates that one(1) is coming in 5126 and the number 1(one) shown in it is not before V and it is I, thus the number of vehicle shown in the policy issued by the appellant-Insurance company is DL-IV-5126, therefore, contention of learned for the appellant that the vehicle number has been denied by the owner and the vehicle is not insured by the appellant-Insurance Company is wrong and misconceived and not tenable. Even otherwise the same has been proved by the claimant-respondent by adducing evidence and the owner has also not denied the same in his evidence, while he appeared as D.W.-1. So far as the mention of number of vehicle in the First Information Report is concerned, since the same has been written by some other person and in Hindi, it may have inadvertently been written as B in place of 'V' and it does not give any benefit to the appellant.

10. The other plea taken by the owner is that the vehicle was in the workshop on the date and time of accident, therefore, it could not have been involved in the accident. The D.W.-1 i.e. the owner has admitted in his evidence that he had not given the documents of repairs during investigation. He has also stated that he has also not produced the same at the time of bail of the Driver- Ram Naresh i.e. the respondent no.3 and release of the vehicle and the

same were produced on the date of evidence itself, therefore the evidence of the owner is not reliable that the vehicle was in the workshop on the date of accident. Thereafter learned Tribunal also considered that in regard to the accident in question the charge sheet has been filed against the driver of the vehicle. This court does not find any illegality or error in the findings recorded by the tribunal because if the vehicle would have been in the workshop on the date and time of accident and aforesaid documents with the owner, he would have certainly intimated about it during investigation and placed before the court in bail and release application for taking benefit of it and it could have been the best material in the said proceeding and in favour of the owner and driver. Merely because the learned tribunal after arriving at conclusion on the basis of evidence before tribunal, considered filing of charge-sheet in the matter against the driver, the order can not be said to be vitiated because it could have been considered to strengthen the findings and conclusions recorded by the tribunal.

11. Mr.Haseeb, the D.W.-2 has also stated in his evidence that he had only signed the bill and the list of materials required for repairing, which was given on the letter head of the workshop and he had not prepared the bill and list and failed to indicate as to who had prepared them. Perusal of the documents relating to repairs produced by the owner indicates that quotation has been given on 23.09.2013 for 8 items, but only three items have been purchased on 24.09.2013, whereas the labour charges have been taken for six works. Thus all the required items have not been purchased. This also indicates that the contention of the owner is not correct that the vehicle was in the workshop on the date of accident for repairing of steering and the evidence of the workshop owner is also not reliable for the reason that he could

not state the complete and correct facts. Thus the plea of non involvement of vehicle in the accident in question is not tenable and accordingly rejected. The learned tribunal has rightly and in accordance with law after considering the pleadings, evidence and material on record has held that the accident had occurred on account of rash and negligent driving of bus No.DLIV-5126 by it's driver.

12. The plea of permit has been considered by the learned Tribunal in issue no.4 and held that the burden to prove the validity of permit rests upon the Insurance Company and it could not prove the same, therefore, it is not proved that the vehicle was plying without valid permit on the day and time of accident, whereas the permit on the date of accident i.e. 24.09.2013 was not placed on record and the owner of the vehicle Aftab Alam, who appeared as D.W.-1 categorically admitted in his cross examination that it is correct to say that there was no permit on the date of accident and also stated that it is wrong to say that since there was no permit of vehicle at the time of accident, therefore, he himself has got prepared the papers of repairs. Thus it has been admitted that the vehicle had no permit on the date and time of accident and in this way he also appears to have admitted the accident.

13. The limitations as to use of vehicle on the policy schedule-cum-Certificate of Insurance of Vehicle No.DLIV-5126 as paper No.Ga71/1 and Ga71/2 provides that the policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub-section (3) of Section 66 of the Motor Vehicles Act, 1988 and the policy does not cover use for: a) Organized racing b) Speed testing. It is also mentioned at the bottom of the policy on the second page under the heading important notice that the insured is not indemnified, if the vehicle

is used or driven otherwise than in accordance with this schedule and any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1988 is recoverable from the insured. Thus as per terms and conditions of the policy valid permit was required on the date and time of accident, failing which the insurer is not liable to indemnify.

14. The grounds on which the Insurance Company can deny the claims have been enumerated under un-amended Section 149 and the amended Section 150 of the Motor Vehicle Act, 1988. One of the grounds is the breach of specified condition of the policy, therefore, in case of breach of specified terms and conditions of policy, it can be set up as a defence by the Insurance Company and if proved, the Insurance Company cannot be held liable for payment of compensation awarded.

15. The Hon'ble Supreme court, in the case of ***National Insurance Co. Ltd. v. Challa Upendra Rao (Supra)***, has held that a person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof and plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149 (2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication and the question of policy being operative had no relevance for the issue regarding liability of insurer and granted right of recovery to the Insurance Company. Relevant paragraphs 11 to 13 are extracted here-in-below:-

"11. As was observed in the said case the statutory defences which are available to the insurer to contest the claim are confined to those provided in sub-section (2) of Section 149.

12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-à-vis one who

has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.”

The aforesaid judgment has been relieved by this court in the case of **Chandresh Kumar Agarwal Versus Yogendra Kumar Srivastava and another (Supra)**.

16. The Hon'ble Supreme Court, in the case of **Amrit Paul Singh and another Versus TATA AIG General Insurance Company Limited and others (Supra)**, considered the issue in detail and after considering the unamended provisions of Section 149 (2) of the Motor Vehicles Act 1988 held that since the vehicle was not having the permit at the time of accident and the exceptions that have been carved out under Section 66 of the Act have not been pleaded and proved, therefore the use of vehicle in a public place without permit is a fundamental statutory infraction, therefore the principles laid down in *National Insurance Co.Ltd. Versus Swarn Singh; (2004) 3 SCC 297* and *Lakhmi Chand Versus Reliance General Insurance; (2016) 3 SCC 100* shall not be applicable and in such a situation, the onus cannot be cast on the insurer, therefore the insurer was required to pay the compensation to the claimant with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The

said directions are in consonance with the principles stated in *Swarn Singh* and other cases pertaining to pay and recover principal. The relevant paragraph 24 is extracted here-in-below:-

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in *Swaran Singh* [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and *Lakhmi Chand* [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in *Swaran Singh* [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle."

17. Adverting to the facts of the present case the respondent no.2 i.e. the owner of the offending vehicle has admitted in his evidence that it is correct to say that there was no permit on the date of accident. Thus in view of any contrary and cogent evidence no other inference could have been drawn, except that the vehicle was being plied without any permit on the date and time of the accident.

18. It is settled law that the admission is substantive and best evidence and no other evidence is required, therefore, since there was clear admission by the owner of the vehicle in this case that the vehicle had no permit on the date and time of accident, no other evidence was required to be adduced by the Insurance Company in this regard. Even otherwise it was the burden of the owner first to prove that the vehicle was being plied in accordance

with the terms and conditions of the insurance policy and with valid permit and it has been admitted by the owner that there was no permit on the date of accident.

19. Section 17 of the Indian Evidence Act, 1872 (here-in-after referred as Indian Evidence Act) defines the 'admission', which is extracted here-in-below:-

"17. Admission defined.-An admission is a statement,¹[oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

20. Section 21 of the Indian Evidence Act provides that the admissions are relevant and may be proved as against the person who makes them, or his representative in interest. Section 58 of the Indian Evidence Act provides that the facts admitted need not be proved, which is extracted here-in-below:-

"58. Facts admitted need not be proved.-No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

21. In view of above, once a fact is admitted by a party it need not be proved in any proceeding, therefore, the findings of the tribunal that burden to prove that the vehicle was being plied without valid permit was on the appellant-Insurance Company is misconceived and not tenable.

22. The Hon'ble Supreme Court, in the case of **Avtar Singh and others Versus Gurdial Singh and others; (2006) 12 SCC 552**, has held that admission forms the best evidence and Section 58 of the Evidence Act postulates that things admitted need not be proved.

23. A three Judges Bench of the Hon'ble Supreme court, in the case of **Bharat Singh and others Versus MST.Bhagirathi; 1965 SCC Online SC 57(AIR 1966 SC 405)**, has held that admissions have to be clear if they are to be used against the person making them and the admissions are substantive evidence by themselves, in view of Section 17 and 21 of the Indian Evidence Act. The relevant paragraph 19 is extracted here-in-below:-

"19. Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17, and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence."

24. In view of above, this court is of the view that in absence of permit of the vehicle on the date and time of the accident, the appellant-Insurance Company cannot be held liable to make the payment of the compensation and accordingly the impugned judgment and award 16.11.2016 passed in M.A.C.P.No.460 of 2013; Chhedana Versus Aftab Alam and others by the Motor Accident Claims Tribunal/District Judge, Barabanki is liable to be modified to the extent that the compensation shall be paid by the appellant-Insurance Company to the claimant-respondent no.1 and the Insurance Company will have right to recover the same from the owner and driver in accordance with law.

25. The First Appeal From Order is **partly allowed**. The impugned judgment and award is modified only to the extent that the compensation shall be paid by the appellant-Insurance Company to the claimant-respondent no.1 and the Insurance Company will have right to recover the same from the owner and

driver in accordance with law and rest of the impugned judgment and award shall remain intact. No order as to costs.

26. The lower court record and the statutory deposit and any other deposit made before this court under any order in this appeal shall be remitted to the concerned tribunal forthwith and in any case within a period of four weeks from today for adjustment in the compensation to be paid to the claimant-respondent no.1 under the impugned award.

(Rajnish Kumar,J.)

Order Date :- 13.12.2024
Banswar