

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 928 of 2013

Appellant :- Ram Chandra Jaiswal

Respondent :- National Insurance Company Ltd. Lko.Thro.R.M.And Ors.

Counsel for Appellant :- Pankaj Gupta

Counsel for Respondent :- Satyajit Banerji

Hon'ble Rajnish Kumar,J.

1. Heard Sri Pankaj Gupta, learned counsel for the appellant and Sri Satyajit Banerji, learned counsel for the respondent no.1. None is present on behalf of the respondent nos.2 to 7 despite sufficient service.

2. This first appeal from order under Section 163 of the Motor Vehicles Act 1988 has been filed against judgment and award dated 18.07.2013 passed by the Motor Accident Claims Tribunal/ Additional District Judge Court No.9, Lucknow(here-in-after referred as tribunal) in Motor Accident Claim Petition No.188 of 2003(Smt. Ram Rati and others versus Ram Chandra Jaiswal and another), by which the claim petition has been allowed and compensation to the tune of Rs.16,72,690/- alongwith simple interest at the rate of 6% has been awarded with right of recovery to the respondent no.1 from the appellant, who is the owner of the offending vehicle, after payment of the compensation to the claimant-respondents.

3. The sole argument advanced by learned counsel for the appellant is that on an application moved by the appellant on 09.04.2008, the written statement filed by the appellant was allowed to be amended and the paragraphs 2,3 and 4 in the additional statements in the written statement were incorporated. In paragraph 4, it has been stated that the empty truck of the appellant was going from Sandila to Lucknow for repair in the work shop. Thereafter, the evidence of the owner

and the driver were also adduced to the effect that the empty vehicle was going to Lucknow for repairing in the work shop of Rafiq Garage. As such, the appellant is entitled for benefit of Section 66(3)(p) of the Motor Vehicles Act 1988, but the same has not been considered and denied only on the ground that the appellant has not made any amendment in his written statement to this effect, whereas it was made after allowed by the learned tribunal. Therefore the impugned judgment and award dated 18.07.2013 to the extent it grants right of recovery to the respondent no.1-Insurance Company from the appellant is not sustainable in the eyes of law and is liable to be set aside.

4. Per contra, learned counsel for the respondent no.1 submits that no such plea, as taken in the application for amendment was taken in the written statement. It was only after the evidence of the employee of the RTO, namely, Shrawan Kumar was recorded on 04.03.2008 and 15.03.2008, in which it has come that the vehicle of the appellant was not having permit on the date of accident as it had expired three months back, amendment was made in the written statement and the evidence was adduced, therefore it is nothing but an after thought to save himself i.e. the appellant from the liability. He further submits that benefit of Section 66(3)(p) can be granted only if the transport vehicle was proceeding empty to any place for purpose of repair but neither such place has been disclosed in the written statement even after amendment nor the evidence of owner or mechanic of the work shop where it was alleged to be going was adduced. Therefore the appellant is not entitled for any benefit of the aforesaid provision and the findings recorded by the tribunal in this regard does not suffer from any illegality or infirmity. The appeal has been filed on mis-conceived and baseless grounds, which is liable to be dismissed.

5. Having considered the submissions of learned counsel for the parties, I have perused the records.

6. The claim petition was filed in regard to the accident on 15.09.2002 at 11:45 in the morning on Lucknow- Hardoi Road P.S. Malihabad, District Lucknow. Admittedly, the accident had occurred from vehicle truck having Registration No.U.G.D. 0037 of the appellant, which was proved before the Tribunal. The accident had occurred due to rash and negligent driving of the driver of the aforesaid vehicle. The evidence of the clerk of the R.T.O, Shrawan Kumar was recorded on 04.03.2008 and 15.03.2008, in which he stated that the aforesaid vehicle was not having valid permit on the date of accident and it had expired three months prior to that which could not be disputed by the appellant.

7. The written statement was filed by the appellant on 24.09.2003 and only after recording of evidence of the clerk of R.T.O. on 04.03.2008 and 15.03.2008, he moved an application for amendment in the written statement on 09.04.2008 for incorporating the amendment in the written statement to the effect that empty truck of the appellant was going from Sandila to Lucknow for repair in work shop as paragraph 4 in additional statements of written statement. The said application was allowed on 09.04.2008 itself on a cost of Rs.500/- on the ground that it will not change the nature of the case, despite objection raised by the respondents. Thereafter the evidence of the driver as D.W.1 and the appellant Ram Chandra Jaiswal i.e the owner of the vehicle as D.W.-2 were recorded.

8. The driver admitted the accident. However, he stated that he was going with an empty vehicle from Sandila to Lucknow for repair and thereafter stated for making of body but the place of repair in Lucknow has not been disclosed, therefore there is

contradiction in the statement of the driver. The appellant has also admitted the accident on the basis of the information given by the driver and stated that his empty vehicle was going from Sandila to Lucknow for repair. The vehicle was going to Alambagh. He further stated that he does not know the name of the mechanic but the name of the work shop is Rafiq Garage. However, no proof of Rafiq Garage has been filed. In the written statement also while amending the written statement, the place and name of the work shop has not been given. Therefore the contradictory statement of the driver of the vehicle and the appellant i.e. the owner does not seem to be correct and true. The amendment has also been made only after the evidence had come on 04.03.2008 and 15.03.2008 to the effect that the vehicle of the appellant had no permit on the date of accident and it had expired prior to three months of the said date. Therefore it is apparent that the amendment and the evidence on the issue are after thought. In regard to truck being empty also only oral evidence of appellant and his driver were adduced which are contradictory and does not seem to be true and correct.

9. Learned Tribunal considered the evidence adduced by the appellant and has recorded a finding that the evidence to this effect has been adduced only after recording the evidence of Shrawan Kumar on 04.03.2008 and 15.03.2008 i.e. after 5 years and the appellant could have amended the written statement after filing it but it has not been done. Therefore even if it has not been mentioned in the impugned judgment that the written statement was amended, the impugned judgment and order cannot be said to be vitiated because the evidence adduced by the appellant after amendment has been considered. Even otherwise the tribunal seems to have recorded the aforesaid finding on the ground that the written statement was not

amended for 5 years and it can be inferred from it that the tribunal has not ignored the amendment.

10. Section 66 of the Motor Vehicles Act 1988 provides necessity for permits. Sub section 3 of Section 66 provides certain exceptions in which the provisions of sub-section 1 regarding necessity of permits shall not apply. Section 66(3)(p) of the Motor Vehicles Act 1988 provides exception for necessity for permits to any transport vehicle while proceeding empty to any place for purpose of repair. Therefore in case any transport vehicle while proceeding empty at any place for purpose of repair does not require permit. Therefore a person claiming benefit of this provision has to disclose that the vehicle was proceeding empty and to any place for purpose of repair.

11. In the present case, initially no such plea was taken by the appellant. However, by way of amendment, the amendment was made only to the effect that empty truck of the appellant was going from Sandila to Lucknow for repair in workshop but the place of workshop was not disclosed, even after amendment, whereas as per Section 66(3)(p) of the Motor Vehicles Act 1988, the exemption can be granted only if an empty vehicle was going to any place for the purpose of repair. Therefore the disclosure of the place was required, which has not been done. Even otherwise, as discussed above, the appellant has failed to prove that an empty truck of the appellant was going for repair to any place at the time of the accident.

12. In view of above and considering the overall facts and circumstances of the case, this Court does not find any illegality or error in the impugned judgment and award passed by the learned tribunal, which may call for any interference by this Court. The appeal has been filed on mis-conceived and baseless grounds. It is accordingly **dismissed**. No order as to costs.

13. The statutory deposit made before this Court, by the appellant in the present appeal, shall be remitted to the concerned tribunal, which shall be adjusted towards the damages to be paid to the claimant-respondents under the impugned judgment and award.

14. The lower court record shall be returned to the concerned tribunal forthwith and in any case within four weeks from today.

Order Date :- 7.2.2024/Akanksha