

Neutral Citation No. - 2024:AHC-LKO:42743

Reserved

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 305 of 2001

Appellant :- United India Insurance Co.

Respondent :- Mohd. Jahida Khatoon And Others

Counsel for Appellant :- S.Pradhan

Counsel for Respondent :- Ravindra Pratap
Singh,S.M.A.Zaidi

Hon'ble Manjive Shukla,J.

1. Heard Sri Shishir Pradhan, learned counsel appearing for the appellant and Sri Ravindra Pratap Singh, learned counsel appearing for Opposite Parties No.1 to 5.

2. The appellant through this appeal has challenged the order and award dated 9.4.2001 passed by the learned Motor Accident Claims Tribunal/Vith Additional District Judge, Barabanki in M. A.C.P. No.321 of 1997 and M.A.C.P. No.270 of 1999 whereby learned Tribunal has awarded compensation of Rs.2,13,500/- along with 9% simple interest from the date of filing of the claim petition till the date of actual payment, in favour of the claimants.

3. Facts of the case, in brief, are that Jeep No.UP-41/8715 owned by Mr. Krishna Kishore was being driven by Mr. Akbar Ali on 10.9.1997 and all of a sudden, due to break down of crank shaft, the Jeep collided with a tree near Newli Jheel, Village Newli, Police Station Satrik, Tehsil Nawabganj, District Barabanki. At the time of the aforesaid accident, Jeep was being driven by Mr. Akbar Ali and one Guddu was sitting

in the Jeep as cleaner and both died in the said accident.

4. The M.A.C.P. No. 321 of 1997 was filed by the widow, sons and daughters of the deceased Akbar Ali. The M.A.C.P. No. 270 of 1999 was filed by father, mother and brothers as well as sisters of the deceased Akbar Ali.

5. Both the aforesaid claim petitions were clubbed together and have been decided by the Motor Accident Claims Tribunal vide common order dated 9.4.2001 whereby total compensation of Rs.2,13,500/- along with 9% simple interest has been awarded in favour of the claimants of M.A.C.P. No.321 of 1997 and Claimants No.1 and 2 of M.A.C.P. No.270 of 1999 and further Claimants No.3 to 7 of M.A.C.P. No. 270 of 1999 have not been found to be dependent on deceased Akbar Ali therefore, their claim for compensation has been rejected.

6. The claimants proved the accident by producing witnesses and further it was demonstrated before the learned Tribunal that the Jeep in question was insured by the appellant under a valid cover note of insurance and also that there was a valid driving licence with the deceased which stood renewed for the period from 15.7.1995 to 14.7.1998.

7. Learned counsel appearing for the appellant has submitted that there was a cover note of insurance of the Jeep in question on 10.9.1997 and the period of insurance was from 10.9.1997 to 9.9.1998 and since the accident took place on 10.9.1997 itself therefore, it appears that the vehicle in question was got insured by preparing back dated papers. It has further been submitted that the appellant has filed a

survey report before the Motor Accident Claims Tribunal wherein a photocopy of the letter issued from the competent authority was filed, wherein it was mentioned that the driving licence of deceased Akbar Ali was forged document but even then learned Tribunal in most illegal manner has fastened the liability of compensation on the appellant.

8. Learned counsel appearing for the appellant has argued that from the facts of the case it is crystal clear that the claimants themselves pleaded before the learned Tribunal that one Guddu was in the Jeep at the time of accident in the capacity of cleaner therefore, it is apparent that the vehicle in question was being used for commercial purpose though the said vehicle was not registered as a commercial vehicle, as such the liability of compensation cannot be fastened on the appellant.

9. Per contra, learned counsel appearing for Opposite Parties No.1 to 5 has submitted that a valid insurance cover note was produced before the learned Tribunal and thereby it was demonstrated that the period of insurance cover of the vehicle in question was from 10.9.1997 to 9.9.1998 and further appellant has not produced any witness and has also not submitted any document before the learned Tribunal to show that there was any back dating while preparing the insurance cover note therefore, in absence of any evidence, the argument raised by the learned counsel appearing for the appellant that insurance cover note of the vehicle has been prepared by back dating, on its face is unsustainable.

10. Learned counsel appearing for Opposite Parties No.1 to

5 has argued that so far as the issue of validity of the driving licence of the deceased Akbar Ali is concerned, learned Tribunal has considered the said issue in detail and on the basis of evidence available on record, has recorded finding in its order that the Insurance Company could not produce any admissible evidence to prove that driving licence was a forged document therefore, now without there being any further evidence on record, the appellant cannot be permitted to raise the said issue again.

11. Learned counsel appearing for Opposite Parties No.1 to 5 has also argued that so far as the issue raised by the appellant in this appeal that since Guddu was cleaner of the Jeep in question therefore, the Jeep was being used for commercial purpose and without there being any registration as commercial vehicle, the liability of compensation does not lie on the appellant, is concerned, the said argument on its face is unsustainable as the appellant neither before the learned Tribunal nor before this Court has led any evidence to prove that the vehicle in question was being used for commercial purpose.

12. I have considered the arguments advanced by the learned counsels appearing for the parties and I find that the occurrence of the accident in question has been proved by the claimants by leading evidence.

13. This Court finds that the learned Motor Accident Claims Tribunal while deciding Issue No.3 has considered the validity of the insurance cover of the Jeep in question and on the basis of evidence on record, has recorded finding and has

concluded that the vehicle in question was having a valid insurance cover provided by the appellant. The relevant portion of the finding recorded by the Tribunal is being extracted as under:

याचीगण ने अपने कथन के समर्थन में बीमा कवर नोट संख्या 507170 की फोटो प्रति दाखिल की है जिसके अनुसार यह वाहन दिनांक 10.9.97 से 9.9.98 तक बीमित थी। उल्लेखनीय है कि यह दुर्घटना भी दिनांक 10.9.97 की है परन्तु बीमा कम्पनी द्वारा यह आपत्ति नहीं उठाई गई है कि दुर्घटना होने के उपरान्त इस वाहन को बैक डेटिंग करते हुए बीमित किया गया है। बीमा कम्पनी की ओर से बीमा पालिशी कागज संख्या सी-40 को दाखिल किया गया है। इस प्रकरण में बीमा कम्पनी के निम्न स्तर के कर्मचारियों के संलिप्त होने की संभावना है पर चूंकि बीमा कम्पनी द्वारा कोई आपत्ति नहीं उठाई गई है और न ही उनके द्वारा धारा 170 मोटरयान अधिनियम के अन्तर्गत कोई प्रार्थना पत्र प्रस्तुत किया गया है अतः पत्रावली में उपलब्ध अभिलेखीय साक्ष्य से ही निश्चित रूप से अवधारित किया जाता है कि दुर्घटना के समय वाहन संख्या यू0पी0-41/8715 जीप विपक्षी नं0-3 यूनाइटेड इण्डिया इश्योरेन्स कम्पनी से प्रभावी रूप से बीमित थी।

14. This Court further finds that the issue of vehicle being used as a private vehicle or commercial vehicle and further issue of validity of driving licence of the deceased Akbar Ali have been dealt with by the learned Tribunal on the basis of evidence on record and have been decided against the appellant. The relevant portion of the findings recorded by the learned Tribunal is extracted as under:

बीमा कम्पनी ने ऐसा कोई साक्ष्य प्रस्तुत नहीं किया है जो यह प्रमाणित करे कि वाहन स्वामी द्वारा दुर्घटना के समय या उसके पहले इस वाहन का प्रयोग व्यवसायिक कार्य के लिए अथवा पब्लिक कैरियर के रूप में किया जाता था। वाहन का वन टाइम टैक्स जमा है जैसा कि कागज संख्या सी-30 पंजियन प्रमाण पत्र से प्रमाणित है।

अब न्यायाधिकरण को केवल इतना देखना है कि क्या दुर्घटना के समय मृतक चालक अकबर अली के पास कोई ड्राइविंग लाइसेंस था अथवा नहीं। याचीगण की ओर से अकबर अली के ड्राइविंग लाइसेंस की प्रति कागज संख्या ख-8 दाखिल की गई है। विपक्षी नं0-1 का कहना है कि उन्होंने अकबर अली को नियुक्त करते समय इस लाइसेंस को सही, वैध एवं प्रभावी समझा था एवं गुडफेथ में इसी आधार पर इसे चालक के रूप में नियुक्त किया था। उसका कहना है कि यह लाइसेंस दिनांक 15.1.83 को आर0टी0ओ0 लखनऊ द्वारा जारी किया गया था एवं इसे बाद में दिनांक 15.7.95 से

14.7.98 तक नवीनीकृत किया गया था। वाहन स्वामी ने अपने सशपथ बयान में इस बात को कहा है कि उसने अकबर अली को गुडफेथ में चालक के रूप में उसके चालक लाइसेंस को प्रभावी समझते हुए अस्थाई रूप से नियुक्त किया था। इस बिन्दु पर बीमा कम्पनी द्वारा इस साक्षी से कोई भी जिरह नहीं की गई है और जिरह न करने का कोई संतोषजनक कारण भी नहीं दर्शाया गया है। बीमा कम्पनी की ओर से एक कागज सी-42 अखिल कुमार मिश्रा सर्वेयर की रिपोर्ट की फोटो प्रति मय बीमा कम्पनी को दी गई लाइसेंसिंग अथार्टी की रिपोर्ट प्रेषित करते हुए यह कहा गया कि ये दोनों कागज यह प्रमाणित करते हैं कि दुर्घटना के समय चालक के पास कोई बैध लाइसेंस नहीं था। सर्वेयर की रिपोर्ट की फोटो प्रति दाखिल की गई है जो सर्वेयर द्वारा बीमा कम्पनी को सम्बोधित की गई है। इसी प्रकार लाइसेंसिंग अथार्टी द्वारा रिपोर्ट भी बीमा कम्पनी को ही दी गई है। इन दोनों अभिलेखों को विधि अनुसार प्रमाणित करने का कोई भी सफल प्रयास बीमा कम्पनी द्वारा नहीं किया गया है। बीमा कम्पनी द्वारा केवल इतना कह देना ही पर्याप्त नहीं है कि दुर्घटना के समय चालक के पास बैध चालक लाइसेन्स नहीं था। यह वाद-बिन्दु उनके कथन के आधार पर विनिश्चित किया गया था एवं यह उनका उत्तरदायित्व था कि इस वाद-बिन्दु को वे विधि अनुसार प्रमाणित करते। यह दोनों अभिलेख पब्लिक डोक्यूमेन्ट नहीं हैं अतः बिना प्रमाणित किये यह साक्ष्य में ग्राह्य नहीं है।

15. In view of the aforesaid categorical findings recorded by the learned Motor Accident Claims Tribunal in its order dated 9.4.2001, this Court is of the view that the appellant has not led any admissible evidence in support of the arguments raised in this appeal before the Tribunal and the learned Motor Accident Claims Tribunal has decided the claim petition on the basis of evidence available on record, by recording categorical findings.

16. In view of the aforesaid reasons, this appeal filed by the appellant lacks merit and is accordingly dismissed.

Order Date :- 10.6.2024

Salim