IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1586 of 2012
Date of Decision : 30.10.2015

New India Assurance Co. Ltd. ....Appellant

Versus

Guriqbal Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Gupta, Advocate
for the appellant.

Mr. Chandan Deep Singh , Advocate
for respondents no. 3 and 7.

Mr. Kewal Singh, Advocate
for respondent no. 4.

Surinder Gupta, J.

This is appeal by New India Assurance Company Ltd. against the award dated 02.12.2011 passed by Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal').

2. The Tribunal awarded a compensation of ₹24,88,992/- for the death of Jaswant Singh in an accident with mini bus bearing registration no. PB-10AE-9981 (later referred to as 'the offending vehicle').

3. The short question raised by learned counsel for the appellant-Insurance Company is that driver-Nirmal Singh @ Nimma of the offending vehicle was not holding valid driving licence at the time of accident, as such, under the terms of insurance policy, no liability of insurer is attracted to pay compensation to claimants.

4. Learned counsel for the appellant has argued that a

bare perusal of the driving licence (Ex. R-2) shows that it was issued for driving heavy motor vehicle only whereas the vehicle in question was a mini bus falling within the definition of transport vehicle under Section 2 (47) of the Motor Vehicle Act, 1988 (later referred to as 'the Act'). The driver of the offending vehicle was not possessing a valid driving licence at the time of accident to drive transport vehicle and the Tribunal has erred while ignoring this plea of the appellant while passing the award.

5. As the award has been challenged on limited ground about validity of driving licence of driver of offending vehicle, facts of the case are not being discussed in detail.

6. The accident took place on 15.11.2006, when the deceased was going home, after completion of his duty hours in bank, on a scooter (Activa Honda) bearing registration no. PB-10AW-3095. As per claimants, he was hit by the offending vehicle from behind, as a result of which the deceased received multiple injuries and was brought to CMC Hospital, Ludhiana where he was declared dead by the doctor. While recording finding on issue no. 3, as to whether driver of the offending vehicle was possessing a legal and valid driving licence at the time of accident, the Tribunal has observed as follows:-

> *"18. Onus to prove this issue was upon the respondent no. 3, but during the course of arguments this issue was not pressed by the learned counsel for the respondent no. 3, whereas respondent no. 1 while appearing into the witness box as PW-2 filed his duly sworn affidavit Ex. PB on the file, wherein he produced certified copy of his driving licence Ex. R2 and certified copy of RC of the vehicle*

> *involved in the accident Ex. R3. So, it is proved on the file that the respondent no. 1 was having a valid driving licence at the time of accident. So, this issue is decided accordingly in favour of respondent no. 1 and against the respondent no. 3."*

7. Learned counsel for the appellant has argued that the driving licence of driver was placed on record as Ex. R-2, perusal of which shows that he was possessing licence to drive heavy motor vehicle and not a transport vehicle. Relying on the observations of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd.*** ***vs.*** ***Kusum Rai and others*, *2006 (2) SCC (Cri) 214***, he has argued that where driver of the offending vehicle was not possessing a valid driving licence, the liability of the Insurance Company to pay the compensation is not attracted.

8. Learned counsel for the respondents has argued that driver of the offending vehicle was driving a mini bus at the time of accident. He was possessing licence to drive heavy motor vehicle. The method of driving and mechanism of heavy motor vehicle and heavy commercial transport vehicle is the same, as such, even if there was no endorsement on the driving licence of driver of the offending vehicle entitling him to drive heavy commercial non-transport vehicle that do not absolve the Insurance Company of its liability. Reliance was placed on judgment of Full Bench of this Court in the case of ***National Insurance Co. Ltd.*** ***vs.*** ***Parveen Kumar and others*, *2005 (1) PLR 230.***

9. Firstly, I take citation in the case of ***Parveen Kumar***

(supra). The Full Bench of this Court in that case observed while answering the question before it regarding validity of licence to drive a particular type of vehicle, defined under the Act, in paras 10 and 11, which read as follows:-

> *"10. The issue being no more res-integra, needs no further elaboration. We may, however, hasten to add that the Insurance Company can not be absolved of its liability to pay the compensation by simply pleading that the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of the different class of description, unless it is proved that the cause of accident was the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of different class or description. The observations made by the Supreme Court presuppose that if the driver was driving a vehicle, of which he might not be holding licence as such, but was holding a driving licence of a different description of vehicle, and the driving method of both the vehicles, for which licence was obtained and the one which was being driven, was the same and when even the mechanism of the vehicle is also same, the defence projected by the Insurance Company with regard to the driver not possessing requisite type of licence could be of no avail to it.*
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> *11. We thus overrule the view taken by the Division, Bench in National Insurance Company Ltd. (supra) and hold that if on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence,*

> *the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The defence projected by the Insurance Company in the context of Section 149(2)(a)(ii) and proviso appended to sub-sections (4) and (5) of the Motor Vehicles Act, 1988 can succeed only if it is proved that the accident had taken place only because the driver was not possessing requisite type of licence."*

10. The observation in case of ***Parveen Kumar (supra)*** are not strictly applicable in the facts and circumstances of this case. The question involved here is whether driving licence of driver of offending vehicle was valid to drive mini bus involved in accident.

11. The Act defines different types of motor vehicles in Section 2. However, no vehicle termed as 'HMV' i.e. heavy motor vehicle has been defined in this Section. Section 2(16) defines "heavy goods vehicle", as follows:-

> "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms.

12. Section 2(17) defines "heavy passenger motor vehicle", as follows:-

> "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

13. Section 2(21) defines "light motor vehicle", as follows:-

> "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or

a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;

14. Section 2(47) defines “transport vehicle”, as follows:-

"transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.”

15. “Omnibus” has been defined in Section 2(29) of the Act, as follows:-

"omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driving;

16. The vehicle involved in the accident was a mini bus and admittedly, it was a transport vehicle having sitting capacity of 12 passengers, with gross weight of 5300 kgs., as mentioned in the registration certificate Ex. R-3. Here, the question which arises for consideration is that driver of the mini bus was possessing driving licence to drive heavy motor vehicle i.e. a vehicle with gross or unladen weight of 7500 kgs. or more. In the case of ***S. Iyyapan* vs. *M/s United India Insurance Company Ltd. and another*, 2013 (7) SCC 62**, Hon'ble Apex Court dealt with an issue as to whether driving licence valid for light motor vehicle is also valid for driving a commercial vehicle of that category? After discussing law point, Hon'ble Apex Court observed in para 19, as follow:-

“19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to

> *drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."*

17. In this case also on the date of accident, driver of the offending vehicle was holding a valid driving licence to drive HMV and the vehicle he was driving falls in the category of light motor vehicle. However, it was a commercial vehicle and admittedly, there was no endorsement on the driving licence of driver of the offending vehicle authorizing him to drive a commercial vehicle. As per observations in the case of ***S. Iyyapan***, the insurer is liable to pay the compensation. The view taken in the case of ***Kusum Rai (supra)*** was also discussed in ***S. Iyyapan's case (supra)*** in para 15, as follows:-

> *"15. In the case of* ***National Insurance Co. Ltd. v. Kusum Rai and Others, (2006) 4 SCC 250****, the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in* ***New India Assurance Co. v. Kamla (supra)*** *held that the insurance company cannot get rid of its third party liability. It was further held that the*

*insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in **Oriental Insurance Co. Ltd. v. Nanjappan, 2004 (13) SCC 224** argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed."*

18. As per definition of light motor vehicle given under Section 2(21) of the Act, the same include transport vehicle or mini bus. A person who is authorized to drive a heavy motor vehicle by default is also entitled to drive a light motor vehicle and the light motor vehicle means a transport vehicle as per definition given under Section 2(21) of the Act. This matter was elaborately discussed in para 16 of the judgment of ***S. Iyyapan's case (supra)***, wherein Hon'ble Apex Court observed, as follows:-

*"16. In the case of **National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others, 2008 (3) SCC 464,** the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground*

> *that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:*
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> > *"20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."*

19. Applying the ratio of judgment in the case of ***S. Iyyapan (supra)***, the arguments of learned counsel for the appellant carry no weight and are discarded. This appeal has no merit.

In view of above discussion, the appeal is dismissed.

October 30, 2015 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No