IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.202 of 2009 (O&M) and
XOBJC No.14-CII of 2010 (O&M).
Date of Decision: 02.03.2016.

Jogi Ram ....Appellant.

VERSUS

Surinder alias Sulinder and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sagar Aggarwal, Advocate for the appellant.

Mr. J.P. Sharma, Advocate for respondents No.1 and 2.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-cross objector.

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SNEH PRASHAR, J.

The present appeal for enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Karnal (for short, "the Tribunal") vide award dated 24.09.2008 passed in MACT Case No.35 of 2007, was filed by appellant-claimant Jogi Ram.

Respondent No.3-insurance company also filed cross objections.

Precisely, the facts are that on 24.01.2007 Jogi Ram was coming from Sector-12, HUDA, Karnal and was going home by means of his motorcycle No.HR-07D-8320 (for short, "the motorcycle"). At Nirmal Kutia Chowk, when he was crossing the road on green signal given by the traffic lights and the traffic constable, his motorcycle was hit by jeep No.HR-56-2665 (hereinafter referred to as "the offending jeep") which being driven rashly, negligently and in a high speed, came from the side of Ambala. Due to the impact of the accident, he fell down and sustained multiple, serious and grievous injuries.

Claimant-injured Jogi Ram filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") against driver, owner and insurer of the offending jeep (impleaded as respondents) claiming compensation for the injuries sustained by him. He averred that he spent about Rs.10 lacs on his treatment, transportation and special diet. He was an agriculturist and was also doing the work of property dealing and was earning Rs.50,000/- per month but because of the injuries sustained in the accident he suffered grave mental pain, agony and loss in income.

The petition was contested by the respondents. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal awarded compensation to the tune of Rs.51,276/- to the claimant alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable for payment of the said compensation amount with direction that first charge shall remain on respondent No.3 being insurer of the offending vehicle.

Feeling aggrieved by the award passed by the Tribunal, the appellant-claimant filed the instant appeal seeking enhancement of the compensation amount and respondent No.3-insurance company filed cross objections.

The submissions made by Mr. Sagar Aggarwal, learned counsel for the appellant, Mr. J.P. Sharma, learned counsel for respondents No.1 and 2 and Mr. Rajneesh Malhotra, learned counsel for respondent No.3-insurance company (cross objector) have been heard and record perused.

It is not a contentious issue that the offending jeep due to its rash and negligent driving struck into the motorcycle of the claimant and caused the accident. The finding of learned Tribunal to that effect has not been challenged by either the driver, owner or the insurer of the offending jeep. The claimant filed the appeal being aggrieved of the quantum of compensation awarded by learned Tribunal whereas insurance company-cross objector is aggrieved of the finding of learned Tribunal that the offending vehicle was a 'jeep' and that its driver Surinder alias Sulinder was not holding a valid and effective driving licence at the time of accident. Objection raised by the insurance company that the offending vehicle was in fact a 'Mahindra Pick-up' i.e. a 'commercial goods carrying vehicle' and was not a 'jeep' and that the offending vehicle was being driven in violation of terms and conditions of the insurance policy was rejected by learned Tribunal.

Learned counsel for the claimant argued that to prove the nature of injuries sustained by the claimant, he examined PW1 Dr. K.L. Sachdeva from whom he had taken treatment. PW1 stated that the claimant suffered fracture of ankle joint and of pelvis for which he was operated upon. He also stated that he had charged Rs.8700/- from the claimant towards hospital management and costs of medicine. In addition to the said witness, the claimant produced on record medical bills Ex.P6 to Ex.P44 of an amount of Rs.42,495/-. But learned Tribunal awarded only Rs.31,276/- towards treatment, hospitalization and expenses of medicines etc. The amount of Rs.5,000/- each allowed on account of pain and suffering and special diet is extremely low. As per the disability certificate Ex.P5 tendered in evidence by the claimant, his disability was assessed as 5% and only an amount of Rs.10,000/- was awarded by learned Tribunal on that count which is inadequate. Nothing was awarded towards transportation and attendant charges.

Out of the medical bills Ex.P6 to Ex.P44, learned Tribunal found that the authenticity of medical bills Ex.P11, Ex.P12, Ex.P22 to Ex.P24, Ex.P35, Ex.P37 to Ex.P40 and Ex.P44 was doubtful as no representative of the medical store which issued the said bills in lieu of medicines purchased, was examined. It is also worthwhile to note that the corresponding prescription slips of the doctor were also not produced.

Accordingly, the finding of learned Tribunal rejecting the said bills calls for no intervention. Rest entire amount of the bills i.e. Rs.31,276/- spent by the claimant on his treatment, medicines etc. had been allowed by the Tribunal. However, the amount of Rs.8700/- charged by PW1 K.L. Sachdeva was not added. There appears no reason to decline the said amount when it was specially stated by PW1 Dr. K.L. Sachdeva that he had charged that amount towards hospital management and medicines from the claimant. Rs.31,276 + Rs.8,700/- = Rs.39,976/-, to make it round figure Rs.40,000/- is allowed to the claimant towards expenditure for treatment and medicine etc.

The claimant suffered two fractures and had to undergo operations. He remained hospitalized for seven days. Considering the nature of injuries and the period of hospitalization, the amount of Rs.5,000/- awarded under the head of pain and suffering is enhanced to Rs.20,000/-. Needless to say that the claimant must have spent good amount on his own transportation and on transportation and boarding-lodging of his family members who were attending on him when he was hospitalized. A further amount of Rs.10,000/- is awarded under the said head. The amount of Rs.5,000/- awarded towards special diet needs no intervention.

Because of the hospitalization and injuries the claimant may not have been able to do his normal work for atleast four months. He alleged that he was an agriculturist and was doing property dealing but no substantive or reliable evidence was led by him to prove his occupation and income. Taking him as a casual labourer, his income is assessed as

Rs.4,000/- per month and a further amount of Rs.16,000/- is allowed to him on account of loss in income.

The disability Certificate Ex.P5 was simply tendered in evidence by the appellant and the doctor was not examined to prove whether the disability was permanent or temporary. Accordingly, the amount of Rs.10,000/- allowed on account of disability suffered by the appellant is left unchanged. In the above premise, the appellant is held entitled to enhanced compensation of Rs.49,700/- in addition to the amount already awarded by learned Tribunal, as indicated above which shall be paid by respondent No.3-insurance company within a period of 45 days from the date of receipt of copy of this judgment, failing which the appellant shall be entitled to interest at the rate of 7.5% per annum from the date of filing of the appeal till its realization.

Coming to the issue of liability interse, the insurance company and the insured-owner of the offending vehicle, it is important to note from the insurance policy Ex.R1 that the offending vehicle was a Max Pick Up. The type of vehicle mentioned in the policy is “goods carrying public carrier”. It was a “commercial vehicle package policy”. Apparently, the vehicle was wrongly described as a 'Jeep' in the pleadings by the claimant as well as in the award by learned Tribunal. Learned counsel for the insurance company argued that Mark-D1 was the driving licence of Surinder alias Sulinder who was driving the vehicle at the time of accident. As per verification report Ex.R3, the licence is valid for driving motorcycle, car, scooter, jeep only for the period 05.03.2004 to 03.03.2009. The driving licence does not bear the required endorsement for making it valid to drive a commercial vehicle/transport vehicle. In absence of endorsement to that effect the licence was not valid and effective for driving the 'Max Pick Up' which was a commercial good carrying vehicle and therefore it is apparent that the offending vehicle was being driven in violation of the terms and conditions of the insurance policy.

To support his argument, learned counsel relied upon ***Natinal Insurance Co. Ltd. vs. Kusum Rai & Ors., 2006(2) R.C.R. (Civil) 313 (SC).*** In this case, the driver of the offending vehicle was having driving licence valid for driving 'light motor vehicle' but the owner allowed the driver to drive a 'commercial vehicle'. The driver caused the accident by negligent driving and a child aged 12 years died. It was held that the owner of a vehicle cannot contend that he had no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. Since the driver did not possess a valid driving licence, the insurance company was not liable to pay the claimed amount. In the peculiar circumstances of the case, the insurance company was given right to recover the amount of compensation paid by it from the owner.

Reliance has also been placed on ***Oriental Insurance Co. Ltd. vs. Angad Kol & Ors., 2009(2) R.C.R. (Civil) 419*** and ***New India Assurance Co. Ltd. vs. Roshanben Rahemansha Fakir & Anr., 2008(3) R.C.R. (Civil) 267.*** In Oriental Insurance Co. Ltd.'s case (supra) the driver possessed licence for plying 'light motor vehicle' but was driving a 'transport vehicle/goods carriage' vehicle at the time of accident. Holding that the licence granted for 'transport vehicle' is different from that granted for 'passenger motor vehicle' and specific authorization is required to drive a 'transport vehicle', Hon'ble Supreme Court held that the driver had no valid and effective driving licence for driving a goods vehicle. Similarly, in New India Assurance Co. Ltd.'s case (supra) the driver was holding a licence valid for driving 'three wheeler' but at the time of accident was found driving 'Autorikshaw Delivery van', which was a 'goods carriage public carrier' within the meaning of Rule 51 of the Central Motor Vehicles rules. It was held that the driver was not holding a valid licence.

On the other hand, learned counsel representing the owner-insured argued that the driving licence of Surinder alias Sulinder was admittedly valid for driving motorcycle, car, scooter and jeep. The unladen weight of all the said vehicles does not exceed 7500 kilograms and the weight of 'Max Pick Up' is also less than 7500 kilograms. As such, it falls under the category of 'light motor vehicle' as defined under Section 2(21) of the Act of 1988. Since Surinder alias Sulinder had a valid licence to drive a 'light motor vehicle', therefore, he was authorized to drive a 'light goods vehicle' as well. To support his argument, learned counsel relied upon ***Kulwant Singh and others vs. Oriental Insurance Company Ltd., 2014(4) R.C.R. (Civil) 977.***

The contentious issue is whether the insurance company is entitled to recovery rights on the ground of breach of conditions of insurance policy when the driver possessed a valid driving licence for driving motorcycle, car, scooter and jeep but had no valid licence to drive a 'commercial goods carrying vehicle' at the time of accident. Section 2(21) of the Act of 1988 defines the 'light motor vehicle' as under:-

> *(21) "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 2 [7500] kilograms:"*

Before dealing with the contentions raised by learned counsel for the parties on the said issue, it would be appropriate to examine relevant provisions of the Act of 1988. Section 3(1) of the Act of 1988 reads as under:-

> ***3. Necessity for driving licence. -*** *(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 7 [a motorcab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do."*
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> ***4. Age limit in connection with driving of motor vehicles.*** *– (1) No person under the age of eighteen years shall drive a motor vehicle in any public place:*

Provided that 8 [a motor cycle with engine capacity not exceeding 50 cc] may by driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

The above definition of the 'Light Motor Vehicle' although brings within its amberage 'transport vehicle' or 'omni bus' but indisputedly there is a distinction between an effective driving licence granted for 'transport vehicle' and 'passenger motor vehicle'. Section 5 of the Act of 1988 postulates that no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 section 4 to drive the vehicle. Section 10 prescribes the form and contents of licence to drive which is to the following effect:-

"Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government."

From the provisions referred to above, it is clear that a distinct licence is required for driving 'light motor vehicle' and a 'transport vehicle'.

A 'transport vehicle' may be a 'light motor vehicle' but for the purpose of driving the same, section 10 postulates that a distinct licence is required to be obtained. Similarly, the distinction between a 'transport vehicle' and a 'passenger vehicle' can also be noticed from Section 14 of the Act of 1988. Sub section (2) of Section 14 provides for duration of period of three years in case of licence to drive transport vehicle whereas for any other licence it may remain operative to drive for a period of twenty years from the date of such issue or renewal.

The classification of driving licence provided under the Act of 1988 for a licence valid for driving a 'light motor vehicle' and a 'transport vehicle' shows that as per law only specially trained drivers can be allowed to drive 'transport vehicle'. So much so that the endorsement making the licence valid for driving 'transport vehicle' is not left to remain operative for time unrestricted i.e. to remain valid for a period of 10 years or 20 years. The matter being sensitive, sub Section 2 of Section 14 of the Act of 1988 provides for duration of a period of maximum three years only for making a licence valid for driving 'transport vehicle' which means that the skill to drive a 'transport vehicle' is required to be tested again after the said duration in order to permit the licence to remain valid for driving a 'transport vehicle'. From that it follows that a person having a licence valid for driving 'car, scooter, motorcycle and jeep' or for that matter 'light motor vehicles', being not specially trained cannot drive a 'transport vehicle'.

Indisputedly, the offending vehicle in the present case was not

'Jeep' as was named in the pleadings by the claimant or in the award by learned Tribunal. It was a 'Max Pick Up' and was insured as a 'goods carrying public carrier'. The policy was defined as 'commercial vehicle package policy' being a 'goods carriage', the 'Max Pick Up' is a 'transport vehicle'. Admittedly, Surinder alias Sulinder possessed a driving licence valid for driving motorcycle, car, scooter and jeep. What to say of his licence being valid for driving a 'transport vehicle', it was not even valid for driving a 'light motor vehicle'. It was valid for driving only the vehicles named therein. In any case, there was no endorsement on the licence making it valid to drive a 'transport vehicle'. Section 14(2) expressly indicates that a driving licence issued or renewed under the Act shall, "in the case of a licence to drive a 'transport vehicle', be effective for a period of three years".It is thus clear that if a licence is issued or renewed in respect of a transport vehicle, it can be done only for a period of three years but, in case of any other vehicle, such issuance or renewal can be for even 20 years provided a person in whose favour licence is issued or renewed had not attained the age of 50 years. Since in the case in hand, the driving licence was valid for driving motorcycle, car, scooter and jeep only, the driver could not have driven the offending vehicle which was a 'goods carrying commercial vehicle/ transport vehicle'. To that extent the finding of learned Tribunal is set aside.

However, considering the fact that it is a benovial legislation and in the interest of justice, the insurance company is directed to first pay the amount of compensation to the appellant and then will be at liberty to recover the amount so paid from the owner-insured. Accordingly, the appeal filed by the appellant-claimant is partly allowed and the cross objections filed by respondent No.3-cross objector are allowed.

(SNEH PRASHAR)
JUDGE

02.03.2016.
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