IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

540

XOBJC-34-CII-2003 and
FAO No.871 of 2003
Decided on : 25.10.2017

National Insurance Company Ltd.

... Appellant

Versus

Kailash Chand and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.R.N.Singhal, Advocate
for the appellant.
Mr.T.C.Dhanwal, Advocate
for respondent No.1.
Mr.Mani Ram Verma, Advocate
for respondent No.2.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against the award dated 11.11.2002 passed by Motor Accidents Claims Tribunal, Bhiwani (for short 'the Tribunal').

2. The record of the case was burnt and has been reconstructed from the salvaged record and copies supplied by counsel subject to all just exceptions.

3. On 29.4.2000, Kailash Chand suffered injuries in a motor vehicular accident. He was going on a scooter bearing registration No.HR-16-2449 and was struck by a Maruti car bearing registration No.HR-20-0405 (for short 'the offending vehicle'). He suffered multiple injuries on various parts of the body. He was taken to General Hospital, Bhiwani. He remained admitted for some days in the hospital and two rods were inserted in the right leg and he was operated upon.

4. The claim petition under Section 166 of the Motor Vehicles Act

(for short 'the Act') was filed.

5. The Tribunal awarded a sum of Rs.70,000/- along with interest at the rate of 9%. The appeal has been filed by the Insurance company challenging their liability to pay the compensation amount. In the appeal, cross objections have been filed by the injured for enhancement of the compensation. Since both the cases arise out of the same award, these are to be disposed of by a common order.

6. I have heard learned counsel for the parties and perused the paper book.

7. Learned counsel for the Insurance company has argued that the driver was having a learner licence at the time of accident. The Tribunal has held that the licence possessed by the claimant at the time of accident was not a valid licence but no recovery rights had been given to the Insurance company.

8. Learned counsel for the injured-claimant argued that the learner licence is a valid licence and therefore, the tribunal has rightly not given any recovery rights to the Insurance company. He further argued in his cross objections that the injured remained hospitalized, he was operated upon and two rods were inserted in his right leg. He further contended that his leg was plastered for 45 days. He stated that lot of money was spent during the treatment and he had to suffer pain and mental agony. Earlier, he remained for the period of 20 days in Civil Hospital, from there, he was referred to MCH Rohtak. He was getting treatment from Dr. Arora Hospital,Hisar.

9. Learned counsel for the insurance company, owner and driver opposed the enhancement of compensation. They contended that nothing has been brought on record to establish the medical expenses or to show

that the day to day working of the claimant had suffered because of the injuries.

10. The issue raised by the Insurance company that driver was not having a valid licence as he was holding a learner licence cannot accepted. Legal position regarding validity of driving licence has been decided by the Hon'ble Apex Court in **National Insurance Company Ltd**. Vs. **Swaran Singh and others**.

11 Hon'ble the Apex Court in ***National Insurance Co. Ltd. Versus Swaran Singh and others***, 2004(3) SCC 297 has held as under:

> "89. Motor Vehicles Act, 1988 provides for grant of learner's licence. (See Section 4(3), Section 7(2), Section 10(3) and Section 14). A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licenced resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provision of Section 149(2) of the said Act.
> 90. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licenced" as such a licence is also granted in terms of the provisions of Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

12 From the perusal of the above referred decision, the legal position emerges that the learner licence also comes within the purview of 'Duly licenced'.

13 The basis of grievances of Shri Singhal, counsel for the appellant is no longer exists because the Tribunal after holding that learner licence was not a valid licence did not grant the recovery rights to the Insurance company. In view of the law laid down by the Apex Court, the learner licence is held to be a valid and therefore, there is no question of giving recovery rights. It may be clarified here that there is no allegation that the driver was not complying with the conditions of learner licence at the time of accident.

14 So far as the cross objections filed for enhancement are concerned, it is evident from the perusal of the award that the actual amount spent on medical expenses was not proved. There is no evidence on record to show that there was some permanent or temporary disability suffered by the injured. Be that as it may, the fact remains that in the accident, Kailash Chand suffered a fracture on the right leg for which he was operated upon. Two rods were inserted and he remained hospitalized for more than 20 days. The Tribunal has awarded Rs.40,000/- for medical treatment, Rs.6000/- awarded for transportation and Special Diet and Rs.24,000/- was awarded for suffering physically, mentally and financially and for remaining on bed. Keeping in view the type of injuries and the treatment the injured had to undergo, the amount awarded is on the lower side and the same is to be enhanced.

15 The just and equitable compensation would be arrived at, if a lump sum amount of Rs.1 lakh is awarded to the injured claimant over and

above the amount already awarded by the Tribunal. It may be mentioned here that while awarding this lump sum amount, the interest under Section 171 of the Act has been taken care of.

16 The net result, the appeal is dismissed and the cross objections are partly allowed.

[Avneesh Jhingan]
Judge

25.10.2017
sd

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No