

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3175 of 2015 (O&M)

Date of Decision: 10.10.2017

Reliance General Insurance Company Limited

.....Appellant

Versus

Sheela Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.K. Bashamboo, Advocate
for the appellant.

Mr. Munish Mittal, Advocate
for respondents No.1 and 2.

Mr. Inderjeet Singh, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 12.1.2015 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal).

The brief facts necessary for adjudication of the present appeal are as under:

On 22.2.2011 Deepak Kumar lost his life in a motor vehicular accident. He was hit by a rash and negligently driven car bearing registration No. HR-01-M-9972 (for short 'the offending vehicle') while he was on his way towards Village Kathwala from Village Kail on foot. He was taken to Chhabra Hospital, Jagadhri. Thereafter, he was referred to PGIMER, Chandigarh. Ultimately on 1.3.2011 he succumbed to injuries.

FIR No. 30, dated 25.3.2011 was registered at Police Station Sadar,

Jagadhri.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the claimants. The Tribunal awarded a sum of Rs.3,00,000/- alongwith interest at the rate of 7.5% per annum to the claimants. The offending vehicle being insured, the Insurance Company was liable to pay the compensation.

The present appeal has been filed by the Insurance Company. The only issue raised is that the driver of the offending vehicle was holding a learner licence and he was not accompanied with the instructor at the time of accident.

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

Learned counsel for the appellant has argued that the driver of the offending vehicle was holding a learner licence and it has come in the statement of the claimant that she only saw the driver in the car at the time of accident. Learned counsel further contends that there is violation of Rule 3 (b) of Central Motor Vehicles Rules, 1989 (for short 'the Rules'). As there is violation of Rules, the terms and conditions of the policy have been violated, therefore, the Insurance Company is not liable to pay the compensation.

Learned counsel for the respondents pointed that no such plea was raised by the Insurance Company before the Tribunal. Learned counsel rather states that in the written statement filed before the Tribunal, the plea taken by the Insurance Company was that the said vehicle was planted. Learned counsel further argued that in case the Insurance Company was raising the issue of involvement of the said vehicle, there was no occasion

for them to raise the issue of violation of the Rules.

The entire case of the appellant is based upon a single line mentioned in the cross-examination of claimant Sheela Devi-PW1, where she states "*I seen only Ravinder in the said car.*"

It is important to note that there is no dispute by either of the parties on the fact that the driver was holding a learner licence. There is no dispute that Sheela Devi was an eye witness to the accident where she saw her young son being badly hit by a car.

From the perusal of the written statement filed by the Insurance Company, the only reliance which can be placed by appellant, is upon preliminary objection No.4, which reads as under:

"4. That the driver of alleged offending vehicle was not holding a valid and effective driving licence, fitness certificate R.C. etc, which absolves the answering respondent from all the responsibility and liabilities."

A reading of above said preliminary objection makes it clear that no specific objections was raised that the driver was not accompanied by any instructor. Apart from this learned counsel for the appellants has not been able to show any evidence or witness produced by the Insurance Company to substantiate the said objections. The reliance on the cross-examination of PW1 will not support their case. There is no statement made that no one else was there in the car. What Sheela Devi said was that she had only seen Ravinder. This cannot be taken to an extent to presume that there was no instructor in the Car. Be that as it may, the onus is to be discharged by the party, who is alleging the contravention of the Rules. They cannot establish their case by finding weakness in the evidence brought by the claimants. The issue raised is purely a factual. The same was

required to be raised specifically in the written statement so that the claimants get an opportunity to rebut the same. A general issue framed before the Tribunal “Whether the insured violated the terms and conditions of the Insurance policy, as alleged. If so, its effect?”, will not establish that there was a specific pleading to this regard. Here the case is being set up that Rule 3 (b) of the Rules, has been violated, there has to be a specific pleading to that effect that the condition of Insurance Policy has been violated for such and such reason.

There is no dispute on the legal proposition that the learner licence is a valid licence and the driver would be regarded as duly licenced.

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 licensed 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 licensed" 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."

A criminal case was also registered against the driver of the offending vehicle. In the criminal case, accused Ravinder Singh was indicted to face trial on two counts:

On being sent up by the police, Sadar Jagadhri, accused Ravinder Singh, has been indicted to face trial on the following counts:

"(i) Under Section 279 of Indian Penal Code for driving car bearing registration No. HR-01-M-9972 in a rash and negligent manner at a public road, so as to endanger human life and personal safety of others, on 22.2.2011, in the area Police Station Sadar Jagadhri;

(ii) Under Section 304-A for causing the death of Deepak, not amounting to culpable homicide, while driving his aforesaid car in a rash and negligent manner, on 22.2.2011, in the area of

Police Station, Sadar Jagadhri;"

A perusal of the above would show that there was no mention of contravention of 3 (b) the Rules.

This Court in *National Insurance Company Versus Zana Begum (widow)*, 2000(1) RCR (Civil) 134 has held as under:

"9. In addition to the above observations made earlier in this judgment regarding discharge of burden of proof and the defence taken by the appellant, it may also be noted that there is no evidence coming forth to show that the driver of the car was prosecuted for breach of rule 3(b) of the Rules. This also is the circumstance which can be considered as an evidence for holding that there was no breach of Rule 3(b) of the Rules. To say in different words had there been any breach, the driver would certainly have been prosecuted, and that evidence could have been brought by the Insurance Company and no such evidence could have been shown to me from the record.

10. Because of the above reasons, there appears to be no ground to disturb the award against the appellant."

In view of the observations made earlier in this judgment regarding the discharge of burden of proof and the defence taken, it has been established that the driver of the car was not prosecuted for breach of 3(b) Rules.

This has to be considered as an evidence for holding that there was no breach of Rule 3(b). Reliance placed upon the cross-examination of PW1 cannot be taken to the extent as is being used by the Insurance Company. A mother, who is witnessing a fatal accident of a young son, cannot be said to be in a mental state that she would be aware of all the

happening in those surroundings.

For the above reasons, there appears to be no ground to disturb the award against the appellant. As a result, the appeal is dismissed being without any merit.

10.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

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