110-A

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.145 of 2018 (O&M)
Decided on:-January 12, 2018.

IFFCO TOKIO General Insurance Co. Ltd.

………Appellant.

Versus

Bhupender Singh and others

………Respondents.

<u>CORAM</u>: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

*****

Present:- Mr. Sanjeev Kodan, Advocate
for the appellant.

<u>HARI PAL VERMA, J.</u>

<u>CM-460-CII-2018</u>

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 68 days in filing the present appeal.

For the reasons stated in the application, the same is allowed and the delay of 68 days in filing the instant appeal is condoned.

<u>FAO No.145 of 2018</u>

This appeal has been filed by the appellant-insurance company impugning the award dated 02.08.2017 passed by the Motor Accidents Claims Tribunal, Narnaul (for short, the Tribunal), whereby the claimant was held entitled for compensation on account of injuries suffered by him in the accident.

Briefly stated, respondent No.1-claimant Bhupender Singh had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the MV Act) seeking compensation on account of injuries suffered by him in the accident.

It is the case of claimant Bhupender Singh that on 27.12.2015, he along with Ravinder (since deceased) was coming from Narnaul to his village on a motorcycle bearing registration No.HR-35B-9615. Ravinder was driving the motorcycle at a moderate speed and the claimant was a pillion rider. However, at around 12.30 p.m., when they reached opposite the fields of Ram Singh son of Budh Ram, caste Ahir, resident of village Surana, just before village Sarai, the offending vehicle i.e. tanker bearing registration No.HR-66-7551 being driven by respondent Om Parkash in a rash and negligent manner came at a high speed from the wrong side and hit their motorcycle. Resultantly, both of them fell down on the road. Ravinder came underneath the front tyre of the tanker and his head and face were crushed. He succumbed to the injuries on the spot. For once, the driver of the offending vehicle stopped the tanker at the spot, but thereafter, he fled away with the tanker towards Narnaul. Since the accident took place due to rash and negligent driving of the tanker by respondent Om Parkash, all the three respondents being driver, owner and insurer of the offending vehicle are jointly responsible for causing injuries to the claimant.

For the accident, FIR No.371 dated 27.11.2015 under Sections 279, 304-A, 337 and 427 IPC was registered against respondent Om Parkash at Police Station Sadar Narnaul. The claimant was shifted to Government

Hospital, Narnaul and was given first aid, but considering the seriousness of injuries, he was referred to PGIMS Rohtak, where he remained admitted as an indoor patient upto 29.12.2015. Thereafter, he again remained admitted there w.e.f. 15.01.2016 to 18.01.2016. On 15.01.2016, the operation of his hand was conducted. In this manner, the claimant has claimed compensation towards the amount spent on his treatment, transportation, attendant charges and nourishing diet charges etc. He became permanently disabled and his life has been ruined.

Vide impugned award dated 02.08.2017, the Tribunal held that the claimant sustained injuries as well as 9% disability due to the accident in question. The offending vehicle was found to be insured with the appellant-insurance company and it was also proved that respondent Om Parkash was having a valid and effective driving licence. The Tribunal assessed total compensation of Rs.2,61,560/- in the following tabulated form:

1.	Medical bills	Rs.12,000/-
2.	Pain and suffering	Rs.25,000/-
3.	Special diet	Rs.25,000/-
4.	Disability	Rs.18,000/-
5.	Future prospects	Rs.1,81,560/-
6.	**Grand total**	**Rs.2,61,560/-**

Accordingly, vide impugned award dated 02.08.2017, the Tribunal awarded total compensation of Rs.2,61,560/- to claimant Bhupender Singh (respondent No.1 herein) along with interest @ 9% per annum from the date of institution of the petition till its realization recoverable from all the respondents i.e. driver, owner and insurer of the offending tanker jointly and severally.

Not satisfied with the aforesaid award dated 02.08.2017 passed by the Tribunal, the appellant-insurance company has filed the present appeal.

Learned counsel for the appellant-insurance company has argued that the Tribunal has not considered the fact that the driver of the offending vehicle was not authorised to drive an oil tanker (hazardous vehicle) as there was no specific endorsement on his licence Ex.R2. Section 14 of the MV Act provides for a specific endorsement to ply such type of hazardous vehicles. RW1, who is the licensing clerk of the concerned licensing authority, has deposed that as per record, the driver was not authorised to drive a hazardous vehicle i.e. oil tanker etc. Therefore, the insurance company is not liable to indemnify towards the compensation so awarded by the Tribunal as the driver was not holding a valid and effective driving licence at the time of accident.

He has further contended that the permit Ex.R1 of the offending vehicle was valid w.e.f. 18.08.2010 to 15.08.2015, whereas the accident had taken place on 27.12.2015. Thus, on the relevant date, when the accident took place, the offending vehicle was without a valid permit. The Tribunal has awarded compensation without there being any evidence of income of the claimant. The accident took place on 27.12.2015 and at that time, the minimum wages fixed by the State Government were approximately Rs.7600/-. Therefore, the income of the claimant assessed by the Tribunal is on the higher side.

I have heard learned counsel for the appellant-insurance company.

The contention of learned counsel for the appellant-insurance company that the income of the claimant has been assessed by the Tribunal on the higher side cannot be accepted for the reason that the income of the claimant has been assessed by the Tribunal as Rs.9,880/- per month presuming him as a labourer. Therefore, it cannot be said that such income is on the higher side.

So far as the argument raised by learned counsel for the appellant that the offending vehicle was not possessing a valid permit at the time of accident is concerned, the same is contrary to record as though the permit Ex.R1 was valid w.e.f. 18.08.2010 to 15.08.2015, but there is a further endorsement on the permit Ex.R1, whereby it has been validated for another five years i.e. upto the year 2020. Therefore, on the relevant date when accident took place, the offending vehicle had a valid permit.

Another argument as put forward by learned counsel for the appellant that the driver of the offending vehicle was not holding a valid driving licence as there was no endorsement on it to drive a hazardous vehicle and as such it was in violation of Section 14 of the MV Act, cannot be accepted for the reason that the appellant has not adduced any evidence that the absence of such endorsement on the driving licence in any manner has contributed to the accident. The absence of endorsement is only a minor and inconsequential deviation with regard to licensing conditions and it is not a sufficient ground to deny benefit of insurance to third parties. A similar plea has been considered by the ***Madras High Court in 2008 ACJ 516*** titled as ***National Insurance Company Limited Versus K. Ramasamy and others***. In that case, the driver of the tanker lorry involved in the accident was holding a licence to drive the heavy goods vehicle and no endorsement was made on the said licence, as contemplated in Rule 9(3) of the Central Motor Vehicle Rules, 1989, which read as under:

> "***9(3).*** *The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life*."

In the aforesaid judgment, the case of ***National Insurance Company v. Swaran Singh 2004 ACJ 1 (SC)*** was also considered by the Madras High Court and paragraph Nos.82 and 83 of the judgment of Hon'ble Supreme Court were referred. Said paragraph Nos.82 and 83 read as follows:

> *"82. ....In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. 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.*
>
> *83. We have construed and determined the scope of sub-clause (ii) of sub- section (2) of section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the*

matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties."

Thus, the Madras High Court held that unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident, the insurer would not be allowed to avoid its liability towards the insured. Thus, the absence of endorsement on the licence, as provided in Rule 9(3) of the Central Motor Vehicle Rules, 1989, will not enable the insurer/appellant to avoid its liability unless it is pointed out that such endorsement was so fatal and was the main or contributory cause of the accident. Accordingly, while considering the judgment of Hon'ble Supreme Court in ***Swaran Singh' case (supra)***, the Madras High Court had dismissed the appeal filed by the insurance company.

In the present case, no material has been placed on record by the appellant-insurance company to establish that the driver of the offending vehicle, who was possessing a licence for one type of vehicle and was found to be driving another type of vehicle, was the main or contributory cause of the accident. It has neither been pleaded nor established by acceptable evidence that failure on the part of the holder of the driving licence to undergo the training prescribed under Rule 9 of the Central Motor Vehicle Rules, 1989 in any way contributed to the cause of accident. The main purpose of the qualification and training prescribed under Rule 9 of the Central Motor Vehicle Rules, 1989 is to equip the driver of tanker lorries transporting hazardous substances to handle certain emergencies and to make him aware of certain basic emergency procedures, in case of any spillage of hazardous substances transported in the vehicle is caused due to an accident.

Thus, failure on the part of the driver of the offending tanker to undergo the prescribed training of one day has in no way contributed to cause of the accident. Even otherwise, the appellant-insurance company has failed to establish the fact that at the time of accident, the offending vehicle was carrying any hazardous or combustible material. Therefore, the contention of learned counsel for the appellant that since the vehicle in question was registered as a petrol tanker and a special endorsement was required to be obtained by the driver to drive a petrol tanker, cannot be accepted as it has not been proved on record that the offending vehicle was carrying any petroleum or hazardous product at the time of accident. Thus, unless the offending vehicle actually contained any petroleum or hazardous product, it cannot be pleaded that the driver was not authorised to drive such a vehicle. Reliance in this regard can be placed upon the judgment of the Karnataka High Court in ***2016 ACJ 475*** titled as ***New India Assurance Co. Ltd., Bangalore Versus Velumurugan V. and another***. Para No.10 of the said judgment reads as under:

> *"10. So far as point No.1 is concerned, the appellant is not disputing the driver possessing a valid licence to drive a HGV. The contention of the appellant is that since the vehicle in question is registered as petrol tanker, special endorsement was required to be obtained by the driver to drive a petrol tanker. Admittedly, when the accident occurred, it was an empty tank. In the cross-examination of RW1, he has admitted as hereunder:*

'When the accident occurred, there was no petroleum product in the tanker.'

Therefore, it is clear that when the accident occurred, it was an empty tanker. In order to drive an empty tanker, no endorsement is required by a driver to drive such vehicle since it was not carrying on any hazardous or combustible material. In order to consider the questions involved in this appeal, we have to consider the provisions under Section 14(2)(a) of the Motor Vehicles Act, 1988, which reads as hereunder:

'14(2)(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

Proviso to Section 14(2) (a) clearly indicates that special licence is required to drive a vehicle, which is carrying on goods of dangerous or hazardous nature and such licence will be effective for a period of one year and thereafter the driver has to undergo one day refresher course of the prescribed syllabus. Therefore, it is clear that the special licence to be granted under this proviso will be valid for one year and thereafter it will be renewed subject to the driver undergoing one day refresher course, which indicates that in order to grant such special licence, the driver has to undergo a course which is meant for safety measure. Safety measure is required when the vehicle is carrying on combustible, dangerous or hazardous nature goods. In other words, if a tanker is not carrying on goods of dangerous or hazardous nature, there is no necessity to obtain such special *licence to drive an empty tanker. Therefore, the arguments of Sri R. Jaiprakash that the driver did not possess an endorsement is not acceptable. Accordingly, we hold that in order to drive empty tanker, no such licence is required because the vehicle did not carry any dangerous or hazardous nature goods. Accordingly, point No.1 is answered in negative*."

In view of the above, this Court does not find any merit in the present appeal. Accordingly, the impugned award dated 02.08.2017 passed by the Tribunal is affirmed and the instant appeal is hereby dismissed.

(HARI PAL VERMA)
JUDGE

January 12, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No