

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.88/2015

1. NARESH RAGHUVIR CHIPKAR

S/o. Raghuvir Chipkar,
age 21 years, unmarried,
r/o H.No.1501, near MRF Factory,
tisk, Usgao, Ponda Goa.

2. Miss Raksha Raghuvir Chipkar,
age 21 years, unmarried,
r/o. H.No.1501, near MRF Factory,
tisk, Usgao, Ponda Goa.

...APPELLANTS

Versus

1. SMT. PRAFULLA @ SHANTABAI,
Shrikant Chari, w/o late Shrikant Y. Chari,
aged 56 years, housewife,
r/o H. No.245, Mandur, Padribhat,
Tiswadi Goa.

2. SHRI BHUSHAN @ Tullsidass
Shrikant Chari, S/o late Shrikant Y. Chari,
Aged 29 years, service, r/o. H. No.245,
Mandur, Padribhat, Tiswadi Goa.

3. NEW INDIA ASSURANCE CO. LTD.
Having its branch office at Dadji Mansion,
Opp. Sarawat Bank, Second floor,
Ponda Goa 403401.

...RESPONDENTS

Mr. Suraj Naik, Advocate for the Appellants.

Mr. A. D. Bhobe, Advocate for the Respondent Nos.1 & 2.

Mr. E. Afonso, Advocate for the Respondent No.3.

CORAM: M. S. SONAK, J.
DATED: 11th February 2022

JUDGMENT:

1. Heard Mr. Suraj Naik for the appellants, Mr. Ashwin Bhobe for respondents no.1 and 2, and Mr. E. Afonso for respondent no.3.

2. The challenge in this appeal is to the impugned Judgment and Award dated 29.11.2014 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.48/2012.

3. Mr. Suraj Naik, learned counsel for the appellants at the outset made it clear that the appellants were restricting their challenge to the pay and recover order made by the Tribunal. He submits that in this case the vehicle which was involved in the accident was insured with respondent no.3 and there was no breach of any of the terms and conditions of the insurance policy. In particular, he submitted that the burden of establishing a breach is on the insurance company, and in this case, the insurance company had failed to discharge that burden. He, therefore, submitted that in this case the Tribunal erred in making a pay and recover order but should have foisted the entire liability only on the insurance company.

4. Mr. Naik submitted that RW4, the Assistant Director of Transport failed to produce the legally admissible documents before the Tribunal. He pointed out that RW4 claimed that he was producing a computerized copy of the details of the extract but factually what was produced was the photocopies without signatures and endorsements.

5. The Tribunal erred in overruling the objections raised on behalf of the appellants. He submits that on a bare statement of RW4 that the appellant no.1 was not holding a driving license as of 30.04.2011 i.e. the date of the accident, the insurance company cannot be said to have discharged the burden which law casts upon it.

6. Mr. Naik also referred to the evidence of appellant no.1 in this case and pointed out that this appellant had asserted on oath that he was having a valid driving license on the date of the accident but had handed over the original driving license to one Joaquim Fernandes. He also deposed that he was holding a colored xerox but has now misplaced it. Based on this, Mr. Naik submitted that no inference of any breach of the terms and conditions of the insurance policy could at all have been drawn in this matter.

7. Mr. Naik submits that a conviction for an offense under Section 3 of the Motor Vehicles Act 1988 is quite irrelevant in the present proceedings. He relied on *Suresh Mohan Chopra v/s. Lakhi Prabhu Dayal - AIR 1990 SC 1979* to submit that in such matters the burden is always on the insurance company to prove the breach of the terms and conditions of the insurance policy. He submitted that in this case as well no license was produced by the driver but still the Hon'ble Supreme Court held that the insurance company had not discharged the burden that the law casts upon it.

8. For all the aforesaid reasons Mr. Suraj Naik submitted that the impugned Judgment and Award to the extent it holds the appellant no.1 solely liable and exonerates the insurance company may be interfered with.

9. Mr. E. Afonso, learned counsel for the insurance company defends the impugned Judgment and Award based on the reasoning reflected therein. He points out that the evidence of the first appellant inspires no confidence whatsoever and is unbelievable. He points out that the insurance company has discharged the burden by examining the RTO officer who has clearly and categorically deposed that appellant no.1 was not having any driving license on the date of the accident and such a

driving license was issued only on 02.08.2011. He pointed out that the first appellant has also been convicted under Section 3 of the Motor Vehicles Act and even paid the fine. He submits that appellant no.1 claimed to possess a xerox copy of the license but did not produce the same. Appellant no.1 did not even remember the license number or the date and the validity period. Based upon all this Mr. Afonso submitted that this appeal may be dismissed.

10. Mr. Afonso also pointed out that in the entire appeal memo there is no challenge to the finding recorded by the Tribunal about the first appellant not holding a valid driving license. He pointed out that in the entire appeal memo there is no challenge to the pay and recover order. He, therefore, submitted that no such plea should be entertained at the behest of the appellant in this appeal without there being any ground in the memo of appeal.

11. Mr. Ashwin Bhobe learned counsel for the claimant submitted that this appeal may be disposed of in accord with the law.

12. The rival contentions now fall for my determination.

13. It is a settled position of law that the burden of proving the breach of the terms and conditions of the insurance policy is on the insurance company. To that extent, Mr. Naik is quite correct in his submissions as well as his reliance on the decision in *Suresh Mohan Chopra (supra)*. However, the crucial issue that arises in the determination of this appeal is whether such a burden has been discharged by the insurance company in this matter.

14. The insurance company, in this case, had taken a very categorical stand that the first appellant did not have a driving license and this itself constitutes a breach of the terms and conditions of the insurance policy. For this purpose, the insurance company examined its Branch Manager Mr. Sampad Manerkar (RW3). This witness, very clearly and categorically deposed that the first appellant had no driving license on the date of the accident and that this amounted to a breach of the terms and conditions of the insurance policy. He placed on record the insurance policy and pointed out which term had been breached in this case. He even deposed about the letters written to the Appellants to produce a license, if there was one, and deposed to the lack of response. No significant dent was done in the cross-examination to this testimony.

15. The insurance company also examined Pralhad Desai (RW4) the Assistant Director of Transport in the licensing authority of the Ponda Taluka. The appellants reside in Ponda Taluka and consequently, the examination of this officer is quite relevant for the determination of whether the first appellant indeed had a license to drive the vehicle on the date of the accident.

16. RW3 produced on record, let us assume, a xerox copy containing the extracts from the records maintained by his office. This was objected to by the appellants but according to me, the objections were quite correctly overruled by the Tribunal. Strict rules of evidence may not apply to Tribunals under the Motor Vehicles Act. That apart, the witness was called to furnish the details of the driving license if any held by the first appellant. This witness was also called to testify whether on the date of the accident the first appellant had any driving license at all.

17. RW3 has deposed that on the date of the accident there were no records of any license issued to the first appellant. Rather, he deposed that a license was issued to the first appellant on 02.08.2011 having validity up to 01.08.2031. In the cross-examination, some questions were posed about the extract of driving license produced by this witness not being certified or not

containing any endorsement that it was checked with the original. This witness maintained that the details are in the form of a true computer printout of his records. Thereafter, a general suggestion was put to this statement being false or about this witness deposing falsely. Significantly, no specific suggestion was put to this witness when this witness had in clear terms stated that on 30.04.2011 the first appellant was not holding any driving license.

18. The first appellant has examined himself and his testimony hides much more than what it reveals. Significantly, in his examination in chief, the first appellant forgot to even make a positive statement on oath that on the date of the accident he had a driving license. In the course of examination (first round) he stated that he was having a driving license on the date of the accident but that he cannot produce it because he has misplaced it. He also denied the suggestion that the police had filed any charge sheet against him under Section 3 of the Motor Vehicles Act but then went back and stated that he does not know whether it was filed.

19. By order dated 13.10.2013 leave was granted for the re-examination of the first appellant (RW1). On this occasion, he produced a certified copy of the Judgment and Order dated

30.06.2012 passed by the JMFC Ponda in Criminal Case No.76/S/2011/B by which he was acquitted of the offense of rash and negligent driving. In re-examination, he also deposed that on the particular date of the accident he was holding a valid driving license. He then claimed that he had handed over the original driving license to one Joaquim Fernandes. He claimed that he was holding a colored xerox of his license but had misplaced it. Significantly, in his cross-examination in the earlier round, the first appellant had not referred to either holding a colored xerox or handing over the original driving license to one Joaquim Fernandes.

20. The first appellant in his cross-examination post his re-examination admitted that he had been convicted for the offense under Section 3 of the Motor Vehicles Act and sentenced to pay a fine of ₹100/- and in default to undergo simple imprisonment for two days. He then tried to wriggle out and say that he was not aware that he was convicted. He then admitted to having paid the fine. He claimed that the license which he was referring to was issued to him by RTO Ponda. He claimed not to remember the license number or validity period of his license.

21. Evidence of the first appellant inspires no confidence whatsoever. On the date of the accident, the first appellant was

about 21 years of age. Assuming that he was issued any license at the age of 16 and that such license expires in two years in terms of the practice then prevailing, the first appellant must have been issued a license after he turned 18. This license as per practice then prevailing would have been valid until he attains the age of 50 years. If all this were true, then, the question as to why would the appellant obtain a license valid from 02.08.2011.

22. That apart, simply because the burden of proving the breach is on the insurance company the first appellant cannot come to the witness box and give answers that he has misplaced the license or gave it to some other person or that he does not remember the date of issue of the license, its number or validity period. In this case, the insurance company has done everything it was required to do and to that extent, it is clear that it has discharged the burden that the law had cast upon it. In any case, the insurance company had led sufficient evidence to shift the onus on the first appellant. Thereafter, it was for the first appellant to establish that he indeed possessed a driving license on the date of the accident. In this, the first appellant has failed.

23. The decision in the case of *Suresh Mohan Chopra (supra)* is distinguishable. There, the insurance company itself had examined the driver as its own witness. In that case, no

record or even certificate was produced from the transport authority indicating that in the year 1977 no license was granted to the driver. The driver had examined himself and though he had failed to produce the driving license he explained that since the driving license was valid for only one year he had destroyed it after the expiry of the said period. The Hon'ble Supreme Court then held that in this state of the evidence and particularly as the driver was a witness of the insurance company itself, there was no alternative for the Tribunal but to accept the statement of the driver that he had a license at the relevant time. No such circumstances arise in the present case and the Tribunal, therefore, rightly accepted the case of the insurance company that the first appellant had no driving license and this constitutes a breach of the terms and conditions of the insurance policy.

24. In addition, in this matter, there is a conviction under Section 3 of the Motor Vehicles Act for driving a vehicle without a valid license. Even if Mr. Naik's contention is accepted that such conviction is irrelevant or that the parties at times feel that it is better to pay a fine of ₹100/- rather than contest such proceedings, there is other evidence on record that can sustain the finding recorded by the Tribunal.

25. For all the aforesaid reasons, this appeal is liable to be dismissed and is hereby dismissed.

26. Mr. E. Afonso pointed out that in this case, the insurance company consistent with the pay and recover order has already paid the awarded amount to the claimants. He also pointed out that the appellants have paid a substantial portion to the insurance company.

27. In this case, there is indeed no specific ground corresponding to the nature of submissions that were made before this Court on behalf of the appellants. However, in ground no.8 the appellants had contended that the Tribunal erred in concluding that only respondent no.2 is liable. Therefore, by liberally construing the grounds raised in the memo of appeal, Mr. Naik was permitted to argue on the ground which he urged before this Court.

28. As a result, this appeal is dismissed. There shall be no order for cost.

29. The Civil Application does not survive and the same is disposed of.

M. S. SONAK, J.