31.03.2023
Item No.66
Ct. No. 654
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 225 of 2019

I.C.I.C.I Lombard General Insurance Co. Ltd.

versus

Marjem Hossain @ Marjem Sekh & Ors.

Mr. Parimal Kumar Pahari
... for the appellant-Insurance Company

Mr. Jayanta Kumar Mandal
... for the respondent nos. 1 to 7

Mr. Prosenjit Mukherjee
Ms. Poulami Dutta
... for the respondent no. 8

This appeal is preferred against the judgment and award dated 11th September 2018 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Rampurhat, Birbhum, granting compensation of Rs.5,00,000/- (Rupees Five Lakhs) only in favour of the claimants together with interest under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 20th April, 2014 at about 16.00 hours the victim was proceeding towards her residence at Dantura Mallikpur keeping the left side of the Mitrapur-Kushmore *pucca* road and when she reached in front of Hazi Jarshed Saheb House under P.S-Murari the offending vehicle bearing

Model No.M&MG10, Passenger BS-3, Engine No. 13L9188461, Chassis No.MAILU2FWTDSM38343 driven in a rash and negligent manner dashed the victim from behind. As a result of which the victim sustained grievous injuries all over her body and was immediately shifted to Jangipur S.D. Hospital, Murshidabad by the local people. Subsequent thereto, she was referred to NRS Medical College and Hospital, Kolkata for better treatment, where she was admitted on 22nd April, 2014. But unfortunately, she succumbed to her injuries and died on 29th April, 2014. On account of sudden demise of the victim, the claimants being the husband, sons and daughters filed application for compensation of Rs.2,71,000/- (Rupees Two Lakhs Seventy-One Thousand) only together with interest under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined one witness and produced documents which have been marked as **Exhibits 1 to 8** respectively.

The Insurance Company also adduced the evidence of two witnesses and produced documents which have been marked as **Exhibits A** and **B** respectively.

The respondent no. 8, owner of the offending vehicle did not adduce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.5,00,000/- (Rupees Five Lakhs) only together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award the Insurance Company has preferred the present appeal.

Mr Parimal Kumar Pahari, learned advocate appearing for the appellant-Insurance Company submits that the driver of the offending vehicle on the relevant date was not holding valid and effective driving licence to drive the vehicle inasmuch as on the relevant date the driver had learner's licence. Referring to Rule 3 of Central Motor Vehicles Rules, 1989 he submits that the holder of a learner's licence can drive vehicle on condition that such person is accompanied by an instructor holding effective driving licence to drive the vehicle and such instructor should sit in such a position to control or stop the vehicle. However, from the evidence on record the owner of the offending, who was driving the vehicle on the relevant date holding a learner's licence, has neither pleaded nor produced any evidence to show that on the relevant date he was accompanied by an instructor in terms of the Central Motor Vehicles Rules, 1989. Furthermore, he submits that the learner's licence issued in favour of the driver prohibits him from driving any motor vehicle unless he has besides him a person duly licensed to drive the vehicle. Since from the materials on record it is evident that the driver holding a learner's licence was not accompanied by an instructor or person holding valid licence on the relevant date in contravention of Rules hence there is breach of condition of insurance policy. Therefore, the Insurance Company in event of such breach may be given liberty to recover the amount of compensation to be paid to the claimants from the driver and the owner. To buttress his contentions, he relies on the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*** reported in ***(2004) 3 SCC 297***. In light of his aforesaid submissions, he prays for modification of the impugned judgment and award.

Mr. Jayanta Kumar Mandal, learned advocate for the respondent-claimants submits that as per settled proposition in the event of any breach of condition of insurance policy the principle of pay and recovery should be applied.

Refuting such contentions raised by the insurance company, Mr. Prosenjit Mukherjee, learned advocate for the respondent no. 8-owner of the offending vehicle submits that as per Section 10(2) of the Motor Vehicles Act, a driver having learner's licence is entitled to drive the following classes of vehicle, namely, motorcycle without gear, motorcycle with gear, invalid carriage, light motor vehicle, transport vehicle, road roller, motor vehicle of a specified descriptions and thus, the vehicle being a light motor vehicle the driver was entitled to drive such vehicle in spite of holding a learner's licence on the relevant date. Further referring to the decision of *Swaran Singh (supra)* he submits that a driver holding learner's licence cannot be said to be not duly licensed since the provisions of the Motor Vehicles Act, 1988 entitles such driver to drive the vehicle, even if there be a condition in the contract of insurance company that the vehicle cannot be driven by person holding a learner's licence. Accordingly, the driver of the offending vehicle was holding valid and effective driving licence to drive such vehicle and, therefore, the order passed by the learned Tribunal directing the insurance company to compensate should be affirmed and the principle of pay and recovery should not be applied to the facts and circumstances of this case.

Having heard the learned advocates for the respective parties, it is found that the only question that has fallen for consideration in the appeal is whether a driver holding a learner's licence is duly authorized to drive vehicle or such act would lead to breach of condition of insurance policy.

It is the specific case of appellant-insurance company that the driver of the offending vehicle on the relevant date did not have proper driving licence. Admittedly, on the date of accident the driver-cum-owner of the offending vehicle was driving such vehicle by holding a learner's licence. Mr Pahari, learned advocate for the appellant-Insurance Company has raised the issue that the driver holding learner's licence on the relevant date was not accompanied by any instructor or driver holding the effective licence which amounts to breach. In order to appreciate such argument advanced on behalf of the appellant-Insurance Company, it would be apposite to reproduce Section 3(1) of Motor Vehicle Act, 1988, Rule 3 of Chapter II of Central Motor Vehicles Rules, 1989 and Form 3 which is as follows.

"CHAPTER II

LICENSING OF DRIVERS OF MOTOR VEHICLES

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 authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab 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.*

2……………………………………………………………"

" Chapter II

LICENSING OF DRIVERS OF MOTOR VEHICLES

General

3. General. - The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as –

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and………".

" FORM 3

[See rules 3(a) and 13]

LEARNER'S LICENCE

Licence No…………………. Date…………………….

Name to be written across the photograph

Specimen signature/thumb impression of the holder of the licence.

Signature and seal of the licensing authority

1. Name …………………………

2. Son/wife/daughter of …………………………….

3. Date of birth ………………………………

4. Optional ………………………………… Blood Group

RH factor ....

5. Present/ Permanent/ Temporary/ Official (if any) address ....

6. Mark(s) of identification ....

(1) ....

(2) ....

is licenced to drive throughout India as a learner subject to the provisions of rule 3 of the Central Motor Vehicles Rules,1989, a motor vehicle of the following description:-

The holder of the licence has passed the medical test under rule 5 and the preliminary test referred to in rule 11(1) of the Central Motor Vehicles Rules, 1989.

The holder of the licence is exempted from the medical test under rule 6 and from preliminary test under rule 11(2) of the Central Motor Vehicles Rules, 1989.

This licence is valid from...................to......................

"Strike out whichever is inapplicable.

Signature and designation for The Licensing Authority

***Warning:**- The attention of the holder of this licence is drawn to rule 3 of the Central Motor Vehicles Rules, 1989, which prohibits him from driving any motor vehicle unless he has besides him a person duly licensed to drive the vehicle and in every case, the vehicle carries "L" plates both in front and in the rear of the vehicle**"**.*

Thus, Section 3 (1) of the Act clearly provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle. Section 10 (2) of the Act provides that a learner's licence or as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following class of vehicle namely motorcycle without gear, motorcycle with gear, invalid carriage, light motor vehicle, transport vehicle, road roller, motor vehicle of a specified descriptions. Thus, Section 10(2) of the Act entitles a person holding learner's licence to drive aforesaid class of vehicles. It is never in dispute that the offending vehicle falls under the class of vehicle covered under Section 10 (2) of the Act. Therefore, the driver holding a learner's licence was authorised to drive such vehicle on the relevant date. Be that as it may, going through Rule 3 of Central Motor Vehicles Rules, 1989 it manifest that such authority to drive certain class of vehicle holding learner's licence is subjected to certain conditions.

In *Swaran Singh's Case (supra)* the Hon'ble Court observed as follows in paragraph 93 and 94.

> "*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 provisions of Section 149(2) of the said Act.*
>
> *The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act*

provides for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 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 the 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."

Bearing in mind the aforesaid observation of Hon'ble Court that a learner's licence is also a licence within the provisions of the Act and cannot 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. Therefore, the authority to drive on the basis of learner's licence is subjected to the conditions mentioned in the licence. On perusal of the learner's licence **(Exhibit B)** issued under Form 3, it appears that the attention of the holder of the licence has been drawn to Rule 3 of Central Motor Vehicles Rules, 1989 prohibiting him from driving any motor vehicle unless he has besides him a person duly licensed to drive the vehicle. Rule 3 of Central Motor Vehicles Rules, 1989 provides that provisions of sub-section (1) of section 3 shall not apply to a person so long as such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle and such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. If Section 3(1) of the Act is read with the general provisions of Rule 3 of Central Motor Vehicles Rules, 1989 it manifest that the person holding a learner's licence can drive such vehicle on condition that he should be accompanied by an instructor holding an effective driving licence to drive the vehicle.

The respondent no. 8 contested the claim application before the learned Tribunal. No case has been made out that on the relevant date the driver cum owner of the offending vehicle was accompanied by any instructor holding effective driving licence to drive such vehicle or any evidence was led to satisfy the compliance of provisions of law. The charge-sheet **(Exhibit 2)** submitted also does not reveal that on the relevant date of accident the driver cum owner of the offending vehicle was accompanied by any instructor. That being the position, the driver on the relevant date though ‘duly licenced’ has breached the condition of licence as provided in the sections, rules and the licence as well discussed hereinabove by not being accompanied by an instructor holding an effective driving licence to drive the vehicle on the relevant date. The condition in the policy of insurance **(Exhibit 5)** shows that a person holding effective learner’s licence may also drive the vehicle provided such a person satisfies requirements of Rule 3 of Central Motor Vehicles Rules, 1989. The aforesaid conditions is in consonance with the existing provisions and rules pertaining to learner’s licence as discussed above. Now the question arises as to what would be the consequence of such breach. At this stage it would be proficient to refer the decision of Hon’ble Supreme Court passed in *Swaran Singh’s Case (supra)* wherein it held that where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), the tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. In the case of ***Amrit Paul Singh and another versus TATA AIG General Insurance Company Limited*** reported in ***(2018) 7 SCC 558,*** the Hon'ble Supreme Court has applied the principles of pay and recovery following *Swaran Singhs Case (supra)* in the event of breach of condition of insurance policy.

Accordingly, since it is found that there is breach of condition of licence as well as policy of insurance, the principles of pay and recovery would attract in the facts and circumstances of the case.

The quantification of compensation is not in challenge in the appeal.

The impugned judgment and award of the learned Tribunal is modified to the extent that the appellant- Insurance Company shall satisfy the award by making payment of the compensation amount to the claimants along with interest as directed by the learned tribunal and is given liberty to recover the compensation amount paid from the owner and driver in accordance with law.

It is informed that the Insurance Company has deposited a sum of Rs.6,12,433/- vide OD challan no. 56 dated 09.04.2019 in terms of order of this Court dated 15th March, 2019 as well as statutory deposit of Rs.25,000/- vide OD challan no. 2468 dated 3rd January, 2019 with the Registry of this Court.

The respondents-claimants are directed to deposit *ad valorem* court fees, if not already paid.

Learned Registrar General, High Court is directed to release the aforesaid amounts together with accrued interest in the same proportion as directed by the learned Tribunal in favour of the claimants upon satisfaction of their identity and payment of *ad valorem* court fee, if not already paid.

With the aforesaid observations, the appeal stands allowed. No order as to costs.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

Lower Court Records be sent down along with the copy of this order forthwith.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance with all requisite formalities.

(Bivas Pattanayak, J.)