(2002) 1 ACC 499 : (2001) 3 CivCC 291 : (2001) 3 RCR(Civil) 665

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balbir Singh	APPELLANT
Vs	
Nikka Ram and Others	RESPONDENT

Date of Decision: March 23, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304A

Citation: (2002) 1 ACC 499 : (2001) 3 CivCC 291 : (2001) 3 RCR(Civil) 665

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Judgement

V.S. Aggarwal, J.

By this common judgment, two F.A.O. Nos. 2831 and 2832 of 2000 can conveniently be disposed of as both these appeals are directed against the identical awards of the Motor Accident Claims Tribunal, Jalandhar, dated 10.5.2000. By virtue of the impugned award, the learned Tribunal awarded Rs. 70,000/- as compensation in Claim Petition Act No. 8 of 1998 filed by Nikka Ram and Surinder Kaur and Rs. 1,20,000/- in M.A.C.T. No. 9 of 1998 filed by Banta Singh and others, besides interest.

2. The facts alleged are that on 9.9.1997 at 6.30 a.m. Harjinder Mehta had come on cycle to take Mohan Sondhi and Manisha to board the school bus of Central School No. 1, Jalandhar Cantt. Mohan Sondhi and Manisha were studying in the said school. They stopped near the shop of Banta Singh and were waiting for the bus. They both were on the Kucha Portion. At that time, Kuldip Singh came driving the tractor in a rash and negligent manner. He did not blow any horn and struck against the cycle of Harjinder Mehta. It caused injuries to Harjinder Mehta, Mohan Sondhi and Manisha. Mohan Sondhi and Harjinder Mehta were taken to Junta Hospital and were referred to Civil Hospital, Jalandhar, Mohan Sondhi died and later on Harjinder Mehta also breathed his last, Compensation as such was claimed.

3. Respondent Kuldip Singh did not contest while respondent No. 1 Banta Singh filed separate written statement stating that no accident had taken place, According to him, a false case was registered and even the criminal case was stated to be false. He pleaded that the tractor was insured with National Insurance Co., Branch Office, Nakodar.

4. National Insurance Company filed a separate written statement asserting that the driver of the tractor was not holding a valid licence. There has been a breach of terms and conditions of the policy. However, it was admitted that the tractor was insured with the National Insurance Company.

5. Learned Motor Accident Claims Tribunal held that the accident was caused by Kuldip Singh who was driving the tractor rashly and negligently. It was further held that the said driver did not have a valid driving licence. Therefore, the Insurance Company was absolved of the liability to pay the compensation but the compensation was awarded against the other respondents.

6. Aggrieved by the said award, two F.A.Os., referred to above, were filed.

7. The only question agitated in this Court was as to whether the Insurance Company, namely, National Insurance Company Limited, was liable to pay the compensation or not. The answer to the same would depend on the findings as to if driver Kuldip Singh of the tractor had a valid licence or not. It is not in controversy that if he did not have a valid driving licence, the Insurance Company would not be liable.

8. In the present case, the driving licence of Kuldip Singh had not been placed on the record. Out of the said accident, First Information Report No. 132 dated 9.9.1997 with respect to the offence punishable tinder Section 304A of the Indian Penal Code was registered. Therein also, no driving licence of Kuldip Singh was placed on the record.

9. On behalf of the appellants, it was urged that it was for the Insurance Company to prove that Kuldip Singh did not have a valid driving licence and the said Company had failed to examine Balbir Singh or lead any other evidence to show that he did not have a valid licence.

10. On behalf of the appellants, reliance was strongly placed on the decision rendered by the Supreme Court in the case of Narcinva V. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors. II (1985) ACC 34) : 1985 ACJ 397 In the cited case, the Supreme Court held that the onus was on the Insurance Company to show that the driver did not have a valid licence. Mere non-production of the licence by the driver does not exonerate the Insurance Company and in the facts of that case it was held that the Insurance Company was liable to pay. The Supreme Court had concluded as under:

The last question is whether he had a valid driving licence. The High Court had not recorded a clear cut finding on this point. The finding of the Tribunal is more evasive than the one by the High Court. Mr. Sharma did not dispute that the second appellant had

driving licence. His grievance is that he having failed to produce the same when called upon to do so in the cross-examination, an adverse inference be drawn against him that he did not have a valid licence to drive a pick-up van. The submission fails to carry conviction with us. The burden to prove that there was breach of the contract of insurance was squarely placed on the shoulders of the Insurance Company. It could not be said to have been discharged by it by mere question in cross-examination. The second appellant was under no obligation to furnish evidence so as to enable the Insurance Company to wriggle out of its liability under the contract of insurance. Further the R.T.A. which issues the driving licence keeps a record of the licence issued and renewed by it. The Insurance Company have got the evidence produced to substantiate his allegation. Applying the test who would fail if no evidence is led, the obvious answer is the Insurance Company.

11. Similarly, in the case of Rukmani and Others Vs. New India Assurance Co. and Others, , the Supreme Court held that the burden of proving that the driver did not have a driving licence lies on the Insurance Company. While discussing the evidence, the Supreme Court had returned the following findings:

We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, P.W. 1 who was the Inspector of Police, stated in his examination-in-chief, "My enquiry revealed that the respondent No. 1 did not produce the licence to drive the above said scooter. The respondent No. 1 even after my demand did not submit the licence since he was not having it". In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the respondent No. 1 was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from the Regional Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it u/s 96(2)(b)(ii) of the Motor Vehicles Act, 1939.

12. On the contrary, our attention has been drawn towards the decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Gian Chand and others, . The car at the time of the accident was driven by a person who did not have a licence. The said driver had not stepped into the witness-box. The Supreme Court held that the Insurance Company was not liable as the said person did not have a valid licence. In paragraph 10 of the judgment, the Supreme Court held as under:

We fail to appreciate how the aforesaid decision can be any avail to the learned Counsel for the respondents-claimants on the peculiar facts of the present case. It has been clearly held by the Tribunal as well as by the High Court that respondent No. 1 who was permitted to drive the vehicle by respondent No. 9, the insured, was admittedly not having any driving licence. It was not the case of respondent No. 9, the insured, that he did not know that respondent No. 1, whom the vehicle was being handed over was not having a

valid licence. In fact, once he did not step in the witness-box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, respondent No. 1...

13. As is apparent from the nature of the decision, it is all the appreciation of the evidence on the record. In what circumstances it can be held as to whether the driver had driving licence or not, it is a matter of fact, it can be arrived at by appreciation of evidence on the record rather than judicial precedents.

14. In the present case, the owner of the tractor was no other than father of Kuldip Singh, who was driving the vehicle. The Insurance Company had questioned the owner, who contested the claim petition, to produce Kuldip Singh but he did not do so. The driver did not care to contest the petition. Even there was no licence in the case registered against the driver u/s 304A of the Indian Penal Code. In these circumstances, the Insurance Company, indeed, was justified in asserting that there is very little to indicate that Kuldip Singh had a valid licence. The onus does lay on the Insurance Company but in the facts of the case it is discharged. The totality of the facts lead one to such a conclusion. For these reasons, the both the appeals being without merit must fail and are dismissed.