

(2014) 05 P&H CK 0234

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 3663 of 2011 (O and M)

United India Insurance Company
Limited

APPELLANT

Vs

Meena Devi

RESPONDENT

Date of Decision: May 8, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 10, 10(2), 18, 2(21), 3

Citation: (2015) 4 ACC 68 : (2015) ACJ 1829 : (2014) 175 PLR 837

Hon'ble Judges: Jitendra Chauhan, J

Bench: Single Bench

Advocate: Paul S. Saini, Advocate for the Appellant; Nitin Mittal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Jitendra Chauhan, J.

The present appeal has been filed by the Insurance Company, challenging the impugned Award dated 14.2.2011, passed by the learned Motor Accidents Claims Tribunal, Faridkot (in short the Tribunal"). The only argument raised by the learned counsel for the appellant is that the driver of the offending vehicle was not holding a valid driving licence at the time of accident. He was having a LMV licence, whereas the vehicle involved in the accident was motorcycle, for which, the said licence is not valid. He seeks recovery rights from the owner and driver.

2. On the other hand, the learned counsel for respondent Nos. 4 and 5-the driver and the owner, refers to Section 2(21) of the Motor Vehicles Act and states that the weight of the motorcycle falls in the category of LMV, therefore, the learned Tribunal has rightly held the appellant liable to indemnify the award, as the vehicle was insured at the time of accident.

3. I have heard the learned counsel for the parties and perused the case file.

4. Sections 3 and 10 of the Motor Vehicles Act reads as under:--

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 authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab 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) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

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10. Form and contents of licence to drive.--(1) Every learner's licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) 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 classes, namely:--

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) medium goods vehicle;
- (f) medium passenger motor vehicle;
- (g) heavy goods vehicle;
- (h) heavy passenger motor vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description.

5. In FAO No. 694-1991, titled as National Insurance Company Limited v. Smt. Kusam Kumari and others FAO No. 694-1991, decided on 8.2.2012, this Court by following the law laid down by in Oriental Insurance Co. v. Zahardulnisha and others, AIR 2008 Supreme Court 2215, has held as under:--

"16. I have considered the said submission. The arguments advanced by the counsel for the appellant in respect of these contention carries weight and has to be accepted. The driving licence Ex. RX is admitted by Saran Lal as he has stated that he

was holding the driving licence to ply HMV MMV and LMV. The question before Apex Court in authority Oriental Insurance Co. v. Zaharulnisha and others" case (supra) was whether a person holding a driving licence to ply LMV can ply the scooter a two wheeler. The answer to that question has been given in negative by the Hon'ble Apex Court.

17. The relevant paragraphs No. 18 and 19 are reproduced as under:--

"18. In the light of the above settled proposition of law, the appellant-Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act.

19. In the result, the appeal is allowed to the limited extent and it is directed that the appellant-insurance company though not liable to pay the amount of compensation, but in the nature of the case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. Respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.,

18. In view of the observations made by Apex Court, I have no hesitation in holding that Saran Lal was not having a valid driving licence to drive the scooter. So, the Insurance company is not liable to pay the amount of compensation. In authority Oriental Insurance Co. v. Zaharulnisha and others case (supra) the Insurance company was directed to pay the amount of compensation to the claimant and was allowed to recover the same from the owner of the offending vehicle."

6. In the present case, the offending vehicle was a motorcycle. No doubt its weight falls in the category of light motor vehicles, but as per Section 10 of the Act, there should be specific endorsement on the licence with regard to the motorcycle with gear. Though, the driver of the offending vehicle was having a LMV licence, but there is no endorsement about the driving of motorcycle. In view of above cited law and the fact that the driver of the offending vehicle was having LMV licence, which is not valid to drive the motorcycle, the present appeal is allowed and the owner and the driver of the offending vehicle is held jointly and severally liable to pay the compensation. The Insurance Company is given right to recover the amount from the driver and/or owner of the offending vehicle.