

(2014) 07 SHI CK 0199

High Court of Himachal Pradesh

Case No: FAO (MVA) No. 202 of 2007

National Insurance
Company Ltd.

APPELLANT

Vs

Inder Devi

RESPONDENT

Date of Decision: July 24, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 146, 147, 149, 173

Hon'ble Judges: Tarlok Singh Chauhan, J

Bench: Single Bench

Advocate: Ashwani K. Sharma, Advocate for the Appellant; Sunil Chaudhary and Dibender Ghosh, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J.

The present appeal u/s 173 of the Motor Vehicles Act, 1988, (for short "Act") is directed against the award dated 08.08.2006 passed by the learned Motor Accident Claims Tribunal-II, Shimla (hereinafter referred to as the "Tribunal") in Claim Petition No. 6-S/2 of 2003 whereby the learned Tribunal awarded a sum of Rs. 6,22,000/- along with interest at the rate of 7.5% per annum in favour of the claimants.

2. The appellant had filed the present appeal on the ground that the learned Tribunal failed to appreciate the plea of the appellant that the owner/driver of the taxi-van, namely, Jai Chand, was not holding an effective and valid driving licence at the time of accident and the vehicle was being plied by him in contravention of the driver's clause of the terms and conditions of the Insurance Policy. Therefore, the owner/insured lost the right under indemnification.

3. Another ground on which the appellant contested the appeal is that the learned Tribunal erred in holding that the owner/driver of the vehicle was having a valid licence to

drive the vehicle because admittedly the driver was possessed of a licence to drive light motor vehicle(non-transport) only, whereas, he was driving taxi van (commercial vehicle) at the time of accident for which he was not possessed a valid driving licence with the required endorsement to drive the transport vehicle. It was also contended that even this licence was valid up to 04.01.1997, whereas, the accident had taken place on 29.08.1997. Thus, on the date of accident, the driver was not having a valid and effective driving licence and there being a violation of the agreed policy, the Insurance Company ought to have been absolved of any liability.

4. I have heard the learned counsel for the parties and have examined the records of the case carefully and meticulously. Shri Dibender Ghosh, learned counsel for the respondent No. 5, at the outset, pointed out that the accident in question took place on 29.08.1997, which was admittedly before the amendment carried out in the Act with effect from 28.03.2001 and, therefore, the questions as raised in the appeal will have to be determined keeping in mind the provisions of law as they existed prior to the amendment carried out with effect from 28.03.2001. The learned counsel for the appellant has not contested this position. If that be so, then in terms of the provisions of the Act, a light goods carriage had not been defined in the Act while definition of the light motor vehicle indicated that it took within its umbrage both a transport vehicle and a non-transport vehicle as held by the Hon"ble Supreme Court in [National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others](#), :-

9. A "light goods carriage" having not been defined in the Act, the definition of the "light motor vehicle" clearly indicates that it takes within its umbrage both a transport vehicle and a non-transport vehicle.

5. It is only after the amendment carried out in the Act that a wider definition has been given to the different kinds of vehicles, light motor vehicles, medium goods vehicle and heavy goods vehicle. The judgment of the Hon"ble Supreme Court in Annappa's case (supra) was in fact considered by a Full Bench of this Court while deciding FAO No. 307 of 1998 and it was held that a person possessing a valid driving licence to drive a light motor vehicle would be authorized to drive "light goods vehicle" which includes "a light passengers carriage vehicle" and "light goods carriage vehicle". The reference was answered by holding that the driving licence permitting the holder of the licence to drive a light motor vehicle also entitles him to drive a transport vehicle.

6. Similar question came up for consideration before the Hon"ble Supreme Court recently in [S. Iyyapan Vs. United India Insurance Company Ltd. and Another](#), , wherein after taking into consideration the provisions of the law as existed prior to the amendment carried out with effect from 28.03.2001 and after noticing the judgment in Annappa's case (supra), it has been held as under:-

15. In [National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others](#), , the vehicle involved in the accident was a matador having a goods carriage permit and was

insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under: (SCC p.468, para 20)

20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

16. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. u/s 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

- (i) the vehicle was not driven by a named person,
- (ii) it was being driven by a person who was not having a duly granted licence, and
- (iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the

insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

7. Thus, it can safely be concluded that in terms of the provisions of law existing on the date of the accident, no endorsement of commercial vehicle was required and the licence possessed by the driver was valid and effective.

8. This takes me to the next contention raised by the appellant regarding licence being valid up to 04.01.1997. I am afraid that this submission is not borne out from the records of the case. In fact, it was the Insurance Company itself, who examined Roop Kumar Sharma, Senior Assistant, of its Company, who proved on record report Ex. RW2/C, the contents whereof reads as follows:-

No. SDK-(R & LA)/99-2017

Office of the R & LA, Kalpa

at R-Peo, District Kinnaur.

To

Sh. Pratap S. Negi,

Branch Manager, National Insurance

Company Ltd., Main Market, Tapri,

District Kinnaur, H.P.

Dated: 3.8.1999.

Subject: Verification of D/L No. 1/MDI/94 A/C Mr. Jai Chand.

Memo,

Please refer to your office letter No. 421103/63/97-97/28, dated 29-1-99 on the above cited subject.

In this connection it is to inform you that as per the entries of this office record the D/L No. 1/Mdl/94 dt. 5-1-94, which was originally issued by R & LA, Mandi and the duplicate D/L vide No. SDK-17/96 Dt. 28-9-96 stand issued by this office in favour of Sh. Jai Chand, s/o Narpal R/o V& P.O. Shong, Tehsil Sangla, Distt. Kinnaur for L.M.V. only and the said licence was also renewed by this office up to 4-1-99 vide R-No. SDK-11/96 dt. 5-2-96.

This is for your information pl.

Sd/-

Registering and Licensing Authority,

Kalpa at R-Peo, Distt. Kinnaur,

2/8/99.

9. A perusal of the aforesaid report clearly reveals that the licence issued in favour of the driver/owner Jai Chand had been renewed up to 04.01.1999 vide renewal No. SDK-11/96 dated 05.02.1996 and, therefore, on the date of the accident i.e. 29.08.1997, the driver/owner had a valid and effective licence.

10. No other point was urged.

11. Accordingly, present appeal is without merit and is, therefore, dismissed along with all pending application (s), if any, leaving the parties to bear their own costs.