

Shiv Kumar Soni Vs Ku. Rita Kushwaha and Another

Court: Madhya Pradesh High Court

Date of Decision: Feb. 4, 2013

Acts Referred: Motor Vehicles Act, 1988 " Section 10(2), 14, 149(2), 15, 3

Citation: (2013) ILR (MP) 1930 : (2013) 2 MPHT 327 : (2013) 2 MPJR 81 : (2013) 3 MPLJ 255

Hon'ble Judges: N.K. Mody, J

Bench: Single Bench

Advocate: P.N. Mishra, for the Appellant; Amrit Ruprah, Advocate for the Respondent No. 2/Insurance Company, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.K. Mody, J.

Being aggrieved by the award dated 28-10-09 passed by the MACT, Satna in Claim Case No. 440/2008 whereby the claim petition was filed by the respondent No. 1 was allowed and compensation of Rs. 25,000/- was awarded on account of the injuries sustained

in a motor accident and respondent No. 2 was exonerated, present appeal has been filed. Short facts of the case are that the respondent No. 1

sustained injury in a motor accident which was caused on 18-6-08 by rash and negligent driving of the appellant. It was alleged that the offending

vehicle which was driven by appellant was insured with respondent No. 2. It is pleaded that the claim petition be allowed and appellant and

respondent No. 2 be directed to pay compensation to respondent No. 1. After holding an enquiry, a compensation of Rs. 25,000/- was awarded

and respondent No. 2 was exonerated on account that the appellant was possessing learner's licence and was not fulfilling the requirement of

Motor Vehicles Act against which the appeal has been filed by the appellant.

2. Undisputedly, the date of occurrence is 18-6-08 and the learner's licence which the appellant was possessing was valid w.e.f. 18-6-08 to 17-

12-08. No evidence was adduced by the respondent No. 2 to the effect that no licensed driver was sitting on the scooter to instruct the appellant

who was possessing learner's licence therefore, the learned Tribunal has not accepted the liability of respondent No. 2. Learned Counsel for the

appellant has placed reliance on a decision in the case of Gopal Thakur and Another Vs. Urmila Mahant and Others, , wherein the Himachal

Pradesh High Court held that the Insurance Company has failed to lead evidence to the effect that any other person having valid driving licence

was not sitting on the scooter and instructing the driver at the time of accident therefore, the driver who was possessing learner"s licence was

competent and authorised to drive the scooter and Insurance Company is liable. Learned Counsel has placed reliance on a decision in the matter

of Anaal Automobiles Vs. Ashish Kumar Shukla and Others, , wherein the driver possessing learner"s licence was driving motor cycle without

displaying ""L-Board"" and was not accompanied by a duly licensed person thereby committing breach of Rule 3 of the Central Motor Vehicles

Rules, 1989 and the owner failed to lead evidence to prove that due diligence and care had been exercised while giving motor cycle. Chhattisgarh

High Court held that the owner committed breach of terms and conditions of policy and Tribunal was justified in directing the Insurance Company

to pay first and then recover from owner. Thus, it was prayed that the findings in respect of the respondent No. 2 be set aside.

3. Smt. Amrit Ruprah, learned Counsel for respondent No. 2 submits that the law laid down in the case of Gopal Thakur (supra), is not applicable

in this case because in the instant case respondent No. 2 has examined two witnesses who have specifically stated the Rule 3 of the Central Motor

Vehicles Rules, 1989 were not followed. It is submitted that the learned Tribunal has not committed any error in exonerating respondent No. 2 and

prayed that the appeal be dismissed.

4. Chapter II of the Central Motor Vehicles Act, 1989 deals with the licence of drivers of motor vehicles. Rule 3 deals with the learner"s licence

which reads as under:--

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 competent 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

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter ""L"" in red on a white

background.

5. In the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, this Court had occasion to deal with learner"s licence and has

observed as under:--

86. Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(2) 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 licenced 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 Act.

87. The provisions contained in the said Act provide for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the

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

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 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.

6. Whether a learners licence is valid licence and Insurance Company is liable was again taken into consideration by the Hon"ble Apex Court in

the matter of National Insurance Co. Ltd. Vs. Bhagwani and Others, and the Apex Court held that the learner's licence is also a valid licence.

7. Keeping in view the law as laid down by the Hon"ble Apex Court in the matter of Swaran Singh (supra), this Court finds that the learned

Tribunal was not justified in giving the right of recovery to the respondent No. 2. In this view of the matter, the appeal filed by the appellant is

allowed and direction given by the learned Tribunal regarding pay and recover to respondent No. 2 stands quashed.

C.C. as per rules.