

Suresh Mohan Chopra

Vs

Lakhi Prabh Dayal and Others

Civil Appeal No. 3723 of 1990 (Arising out of S.L.P. No. 678 of 1988)

(N. D. Ojha, S. C. Agarwal JJ)

30.07.1990

ORDER

1. Heard learned counsel for the parties.
2. Special leave granted. The appeal is taken up for final hearing with the consent of learned counsel for the parties.
3. The appellant filed a claim for compensation on account of injuries received by him in an accident which took place on November 30, 1977. On that date, the appellant was going on his scooter which met with an accident with a motorcycle which was being driven by respondent 1 and was owned by respondent 2. The Tribunal awarded a sum of Rs. 30,000 as compensation to the appellant against respondents 1 and 2, namely, the driver and owner of the motorcycle as also against the New India Assurance Company Limited-respondent 3 with whom according to the appellant the motorcycle stood insured at the time of the accident.
4. Aggrieved by the award of the Tribunal, the Insurance Company preferred an appeal before the High Court which was allowed and the award as against the Insurance Company has been set aside. The High Court has taken the view that it had not been established that respondent 1 had a driving licence at the time of the accident and consequently the Insurance Company could not be held liable.
5. The appellant has challenged the judgment of the High Court in the present appeal on the ground that the finding of the Tribunal that respondent 1 had a driving licence at the relevant time could not in law, on the facts of the instant case, be reversed by the High Court.
6. Having heard learned counsel for the parties, we are of the opinion that there is substance in the submission made by the learned counsel for the appellant. In the instant case, the driver-respondent 1 had been produced as its witness by the Insurance Company itself and he categorically stated that he had a driving licence at the relevant time issued by the Transport Authority at Rajpur Road in 1977. It is true that the driving licence itself was not produced by respondent 1 but his explanation in this regard was that the same being for one year only he had destroyed it after the expiry of that period. No evidence was produced to show that this explanation was wrong. Further, no other evidence was produced on behalf of the Insurance Company on which, admittedly, the burden of proof lay in support of the plea raised by it that respondent 1 had no driving licence at the relevant time on the basis of which it could be held that the said respondent did not have a driving licence. No record or even a certificate was produced from the Transport Authority indicating that in 1977 no licence was granted to respondent 1. In this state of evidence and particularly when the driver

was a witness of the Insurance Company itself, there was no alternative for the Tribunal but to accept the statement of the driver that he had a licence at the relevant time and the High Court apparently committed an error of law in reversing the finding of the Tribunal simply because the driving licence was not produced.

7. In the result, this appeal succeeds and is allowed. The judgment of the High Court dismissing the claim of the appellant as against the Insurance Company - respondent 3 is set aside and the award of the Tribunal is restored. The appellant shall be entitled to his costs.

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