SUPREME COURT OF INDIA

Rakesh Kumar

Vs.

United India Insurance Company Ltd.

C.A.No.6199-6202 of 2016

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

13.07.2016

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Civil)No.33036-33039 of 2015

1. Leave granted.

2. These appeals are filed against the common final judgment and order dated 22.05.2014 passed by the High Court of Punjab and Haryana at Chandigarh in F.A.O. Nos. 6935, 6937, 6977 of 2011 and 907 of 2012 (O&M) wherein the High Court partly allowed the appeals of the Insurance Company and reversed the award dated 13.09.2011 of the Motor Accident Claims Tribunal, Ambala in MACT Case Nos. 97, 109 of 2008 and 28 of 2009 and exonerated the Insurance Company from the liability arising out of the accident.

3. Facts of the case lie in a narrow compass. They, however, need mention in brief to appreciate the short controversy involved in the appeals.

4. On 16.09.2008, Sheo Ram, Madan Mohan, and Mohindro Devi along with others were traveling in a three wheeler bearing Registration No. PH-11TC-468 from Naraingarh to Shahzadpur. Madan Mohan was driving the three wheeler on the left side of the road. At about 10.30 a.m., when the three wheeler reached near Bus stop of Village Bharanpur on Naraingarh Shahzadpur Road, a truck bearing Registration No. HR-37-C-7937, which came from the opposite side, struck the three wheeler. Though its driver Madan Mohan tried to avoid the accident by taking his vehicle on the extreme left side of the road, yet all the occupants of the three wheeler suffered multiple injuries. The injured were taken to Civil Hospital, Naraingarh in private vehicles. Thereafter, Sheo Ram was referred to PGI Chandigarh where he succumbed to his injuries. A criminal case bearing FIR No. 88 dated 16.09.2008 was registered against Jaipal, driver of Truck No. HR-37-C-7937 at the Police Station, Shahzadpur, District Ambala for the commission of offence punishable under

Sections 279/337/304-A of the Indian Penal Code, 1860 (hereinafter referred to as "the Code"). Madan Mohan, another injured, who was driver of the three wheeler also died later at Civil Hospital, Naraingarh. Smt. Mohindro Devi, the third injured, also suffered a number of injuries in the accident and was shifted to Civil Hospital, Naraingarh but later she also died.

5. The legal representatives of Sheo Ram filed claim petition being MACT Case No. 97/2008, the legal representatives of Madan Mohan filed claim petition being MACT Case No. 109 of 2008 and legal representatives of Mohindro Devi filed claim petition being MACT Case No. 28 of 2009 before the MACT (in short "the Tribunal"), Ambala under Section 166 of the Motor Vehicle Act, 1988 against the owner, driver and insurer of offending vehicle, i.e., HR-37-C-7937 claiming compensation for a sum of Rs.20,00,000/-, Rs.20,00,000/-and Rs.10,00,000/- respectively.

6. It was contested by the non-applicants. One of the defence of Insurance Company (R-3 therein) was that the driver of the offending vehicle had no valid and effective license and hence no liability can be fastened on the Insurance Company.

7. The Tribunal, vide common award dated 13.09.2011, allowed the petitions filed by the claimants and awarded a sum of Rs.6,05,000/- in MACT Case No. 97/2008, Rs.4,56,8000/- in MACT Case No. 109 of 2008 and Rs.51,448/- in MACT Case No.28 of 2009. It was, inter alia, held that the Insurance Company is liable to pay compensation as the driver of the offending vehicle was holding a valid and effective driving license. It was also held that the Insurance Company failed to adduce any evidence to prove to the contrary.

8. Challenging the said order, the Insurance Company filed FAO Nos. 6935, 6937 and 6977/2011 and the claimants filed FAO Nos. 906 and 907 of 2012 seeking enhancement of the compensation.

9. By impugned judgment dated 22.05.2014, the High Court reversed the award of the Tribunal in part in the appeals filed by the Insurance Company and held that since the driver of the offending vehicle did not possess a valid license to drive the vehicle because he failed to file the original one and filed its photocopy, the Insurance Company cannot be held liable to pay the awarded sum. In other words, the High Court held that the driving license was not properly proved and hence it cannot be held that the driver was having a valid driving license. In this view of the matter, the Insurance Company was exonerated from the liability from paying the compensation. However, the Insurance Company was directed to pay the awarded sum to the claimants first and then to recover the awarded sum from the owner and driver of the offending vehicle on the principle of 'pay and recover'.

10. Challenging the said order, the owner has filed these appeals by way of special leave before this Court.

11. A short question that arises for consideration in these appeals is whether the High Court was justified in exonerating the Insurance Company from the liability on the ground that the driver of the offending vehicle did not possess valid license?

12. Heard Mr. A. Tewari, learned counsel for the appellant and Mr. A.K. De, learned counsel for respondent No.1.

13. Submission of Mr. A. Tewari, learned counsel for the appellant, while attacking the impugned order was essentially two-fold.

14. In the first place, learned counsel urged that the High Court erred in exonerating the Insurance Company from the liability arising out of the accident. He submitted that the Tribunal having rightly held that the Insurance Company was liable to pay the compensation to the claimants as the driver of offending vehicle was having a valid driving license at the time of accident and that the vehicle in question was admittedly insured with the insurance company, there was no justifiable reason for the High Court to have reversed the finding of the Tribunal and exonerated the Insurance Company from the liability.

15. In the second place, learned counsel urged that the High Court failed to see that the driver of the offending vehicle had filed the photo copy of his driving license, which was also proved (Exhibit-R 1) by him without there being any objection of the Insurance Company. Learned counsel further pointed out that apart from this, the Insurance Company failed to adduce any evidence to prove that the license held by the driver was fake or not genuine etc.

16. Learned counsel urged that the finding of the High Court is, therefore, not legally sustainable and hence deserves to be set aside and that of the Tribunal on this issue is liable to be restored.

17. In reply, learned counsel for respondent No.1 (Insurance Company) supported the reasoning of the High Court and contended that the impugned order should be upheld calling no interference therein.

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the submissions urged by the learned counsel for the appellant as in our opinion, they deserve acceptance.

19. In our considered opinion, the Tribunal was right in holding that the driver of the offending vehicle possessed a valid driving license at the time of accident and that the Insurance Company failed to adduce any evidence to prove otherwise. This finding of the Tribunal, in our view, should not have been set aside by the High Court for the following reasons:

20. First, the driver of the offending vehicle (N.A.-2) proved his driving license (Exhibit-R1) in his evidence. Second, when the license was proved, the Insurance Company did not raise

any objection about its admissibility or manner of proving. Third, even if any objection had been raised, it would have had no merit because it has come on record that the original driving license was filed by the driver in the Court of Judicial Magistrate First class, Naraingarh in a criminal case arising out of the same accident. Fourth, in any event, once the license was proved by the driver and marked in evidence and without there being any objection by the Insurance Company, the Insurance Company had no right to raise any objection about the admissibility and manner of proving of the license at a later stage (*See Oriental Insurance Company Ltd. Vs. Premlata Shukla & Ors.*[1]*,)* and lastly, the Insurance Company failed to adduce any evidence to prove that the driving license (Ex.R1) was either fake or invalid for some reason.

21. In the light of foregoing reasons, we are of the considered opinion that the High court was not right in reversing the finding of the Tribunal. Indeed, the High Court should have taken note of these reasons which, in our view, were germane for deciding the issue of liability of the Insurance Company arising out of the accident.

22. We, therefore, find no good ground to concur with the finding of the High Court. Thus while reversing the finding, we hold that the driver of the offending vehicle was holding a valid driving license (Exhibit-R1) at the time of accident and since the Insurance Company failed to prove otherwise, it was liable to pay the compensation awarded by the Tribunal and enhanced by the High Court.

23. In view of foregoing discussion, the appeals filed by the insured (owner of the offending vehicle) succeed and are allowed. Impugned order in so far as it relates to exonerating of the Insurance Company from the liability to pay the compensation is set aside and the Insurance Company (Respondent No.1) is held liable to pay the compensation awarded by the Tribunal and enhanced by the High Court jointly and severally along with the driver and owner of the offending vehicle.

24. No costs.

Judgment Referred.

[1]*(2007) 13 SCC 0476*