

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: MACT

MAC App. No.391 of 2008 and CM Nos.9813 and 9815/2008

Judgment reserved on: 1st August, 2008

Judgment delivered on: 11th August, 2008

The New India Assurance Co.Ltd.
1st Floor, Deen Dayal Upadhyay Building
Jhandewala Extn. New Delhi. .Appellant

Through: Mr.Mohan Babu Aggarwal, Adv.

Versus

1. Sh.Dalbir Singh
S/o Shri Gopi Ram
R/o Village Samey Pur,
Post Ujjwa, Delhi.
2. Sh.Girwar Singh,
S/o Shri Chottu Ram
R/o Village and PO Dariyapur,
District Jhajjar, Haryana.
3. Sh.Girwar Singh
R/o 17/6, Mathura Road,
Faridabad, Haryana. Respondents.

V.B.Gupta, J.

1. The present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the Act) has been filed by the Appellant/Insurance Company against the judgment and order dated 04.02.08 passed by Sh. Suresh Chand Rajan, Judge, Motor Accidents Claims Tribunal (for short as the Tribunal), Delhi.

2. Brief facts of the case are that on 05.01.02 at about 11.00p.m. Dalbir Singh, Respondent no.1, aged 33 years, was going to his house on his scooter, one truck bearing registration no. HR-38-E-8698 being driven by Girwar Singh, Respondent no.2 came at a

fast speed and in a rash and negligent manner and hit the scooter of the Respondent no.1. Due to impact, Respondent no.1 fell on the road and sustained injuries.

3. The Respondent no.1 filed the petition under section 166 and 140 of the Act claiming compensation of Rs.25,00,000/- against the Respondent no. 2 and 3 herein being the driver as well as owner of the offending vehicle and the Appellant herein, as the offending vehicle was insured with them.

4. Upon the petition being filed, summonswere sent to the Respondents. The Respondent no.2 who was driver as well as the owner of the offending vehicle, in its written statement denied the factum of the accident as well as involvement of offending vehicle in any accident.

5. Appellant/Insurance Company in its written statement pleaded that driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident.

6. Vide impugned judgment, the Tribunal awarded compensation of Rs. 13,10,650/- along with the interest @ 7% per annum from the date of the filing of the petition till its realization.

7. It has been contended by the Ld. Counsel for the Appellant that the Tribunal perused only the copy of the alleged licence, which was taken into custody by the Police at the time of accident. The tribunal reached at wrong conclusion that licence was valid while during investigation by investigator and in its report and evidence produced before the Tribunal, it was found that the driver of the offending vehicle was not in possession of a valid driving licence and the driving licence in question was issued in the name of some Hussain s/o Baralam and not in the name of Girwar i.e. Respondent no.2 and the date of the same was 23.03.03.

8. Even the RTO concerned admitted the fact that the licence in question is not in the name of the Respondent no.2 i.e. Girwar but this aspect has not at all been considered by the Tribunal and neither the Appellant was not given any right of recovery etc. Thus, there is clear violation of insurance policy by the driver and owner of the offending vehicle and so the Insurance Company has no liability of any kind for payment to the Respondent no.1/claimant.

9. The impugned order is also unsustainable being arbitrary, and based on no evidence and without consideration and appreciation of the evidence on the record of the case. The compensation of Rs.13,10,650/- along with the interest @ 7% seems to be higher side while, as per the present market scenario and as per RBI guidelines, the interest of 4 % is just and proper in the facts and circumstances of the case.

10. Appellant in its written statement filed before the Tribunal has taken certain preliminary objections.

11. Objection no. 1(a) states that; The driver of the alleged vehicle who is alleged to be on the wheels at the time of accident was not possessing an effective Driving Licence for the type of vehicle alleged to have been involved in the accident. The breach of Driving Licence clause on the part of the insured was deliberate. 12. The Trial Court on the pleading of the parties framed three issues and issue no.3 reads as under; Whether Respondent no.1 was not holding a valid and effective driving licence to drive the said truck at the time of accident in question, if so, to what effect

13. On this issue, the finding given by the Tribunal is that; As far as the issue no.3 is concerned the R-3 examined one Sh. Narender Kumar as R3W1 from District Transport Office, Gurgaon proving the issue no.3, however, on perusal of his statement he has given self contradictory statement regarding possession of the driving licence by R-1. He deposed on oath that Girwar Singh, S/o Chotu Ram, R/o Village Basai, Distt. Gurgaon was having a driving licence issued on 01.09.2000 which was valid till 31.08.2003 and he has further deposed that it was valid for HTV. He again deposed that duplicate licence was issued on 08.09.98 and it was valid up to 24.08.2000. So he has no valid driving licence after 25.07.2000 to 31.08.2000 and he proved the relevant record of the register which is Ex.R3W1/A and this witness has not been cross- examined. However, as per the criminal case record I also perused the certified copy of the seizure memo of the driving licence in which the driving licence of Girwar Singh, S/o Chotu Ram containing licence no. 1051/91 issued on 01.09.2000 valid till 31.08.2003 was taken into police custody on 13.05.2002 and I also perused its copy and concern licence was taken into custody and it was valid up to 31.08.2003 and the accident was taken place on 05.01.2002 so this licence was valid for HTV. So in consideration of documents and Ex.R3W1/A, it is clear that at the time of accident the R-1 was holding a valid and effective driving licence. Hence, issue no.1 is decided accordingly in favour of the petitioner and against the Respondents and issue no. 3 is also disposed off accordingly.

14. In the present case, admittedly as per statement of the Appellant own witness, namely, Sh.Narinder Kumar (R3W1) the licence was issued to Girwar Singh, S/o Chotu Ram, from 01.09.2000 which was valid till 31.08.2003 and it was valid for HTV. The duplicate licence was issued on 08.09.98 and it was valid up to 24.07.2000. He had no valid driving licence from 25.07.2000 to 31.08.2000.

15. The accident in the present case took place on 05.01.02 and thus, Respondent no.2, had a valid driving licence at the time of accident. Therefore, I, do not find any force in contentions of Learned Counsel for the Appellant with regard to the fact that Respondent No.2 was not holding a valid and effective driving licence.

16. It was well established by various documents before the Tribunal that the accident took place due to the fault of the driver of the offending vehicle and in the cross-examination also no material has come which could discredit the case of the Respondent no.1.

17. As regards to the contentions of Ld. Counsel for Appellant regarding excessive compensation, the Tribunal awarded the following amount of compensation:-

Compensation on account of pain and sufferings : Rs.50,000/- Compensation on account of medicines, medical treatment : Rs.1,31,450/- Compensation on account of conveyance and special diet : Rs.50,000/- Compensation on account of permanent disability and loss of income : Rs.9,79,200/- Compensation on account of physical disfigurement : Rs.50,000/- Compensation on account of loss of enjoyment and amenity of life : Rs. 50,000/- Total : Rs.13,10,650/-

18. It has come on record that Respondent No.1 is 33 years old and was getting the salary of Rs.8,000/- per month at the time of accident and his salary certificate is Ex.PW1/16. To prove this, Respondent no.1, examined three witnesses namely Anoop Singh brother of Abhay Singh who was the employer of Respondent No.1, Rambir as PW3 and Vinod Kumar as PW4. By their testimonies it is proved that the Respondent no.1 was getting a salary of Rs. 8,000/- per month. This fact has not been rebutted by the Appellant.

19. Respondent no.1 has deposed that he was working as a professional bus driver and was having HTV licence and his driving licence is Ex.PW1/15 and was working under the employment of Sh. Abhay Singh, Village Samay Pur, Post Ujjwa, Delhi and driving the bus under DTC. He further deposed that now he cannot able to ply the bus due to the amputation of his leg and have lost his job.

20. It is evident from the record that Respondent no.1 had suffered permanent disability. He has produced the disability certificate Ex.PW1/14, according to which right below the knee there is amputation and Respondent No.1 is physically handicapped and has 60% permanent disability to his right lower limb. With this type of permanent disability where there is amputation of right leg below the knee, there is no question that Respondent No.1 who was a professional bus driver would ever be able to drive a bus.

21. Thus, the Tribunal, rightly taking the permanent disability to be 60%, has awarded the loss of income as Rs.9,79,200/-. After taking into consideration the monthly loss of income at Rs.4,800 p.m. being 60% of the monthly income, and keeping in view the fact that the age of Respondent No.1 was 33 years at the time of accident, the Tribunal rightly applied a multiplier of 17.

22. Thus, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal.

23. The compensation awarded by the Tribunal is just, fair and equitable. 24. Accordingly, the present appeal filed by the appellant is, hereby, dismissed. 25. Since, the appeal is not maintainable, the application for condonation of delay and the application for stay also stands dismissed.

26. No order as to costs.

27. Trial Court record be sent back.

Sd./-
V.B.GUPTA, J.