

Prithi Chand Vs. Des Raj and ors.

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Court : Himachal Pradesh

Decided On : Aug-11-2009

Judge : V.K. Ahuja, J.

Appellant : Prithi Chand

Respondent : Des Raj and ors.

Disposition : Appeal dismissed

Judgement :

V.K. Ahuja, J.

1. This is an appeal filed by the appellant under Section 173 of the Motor Vehicles Act against the award passed by the learned Motor Accident Claims Tribunal (II), Hamirpur, dated 21.6.2004, vide which the claim petition filed by respondent No. 1 as claimant was allowed and he was granted compensation to the extent of Rs.1,22,389/- and the amount was payable by the appellant.

2. Briefly stated the facts of the case are that respondent No. 1 as claimant filed a claim petition under Section 166 of the Motor Vehicles Act for the grant of compensation as against the appellant, being the owner of the tractor, respondent No. 2 being the driver of the Whether reporters of Local papers may be allowed to see the judgment? Yes. Tractor, respondent No. 3 also being the owner of the tractor and respondent No. 4/Insurance Company was impleaded as the insurer of

the tractor in question. The claimant alleged that on 18.4.2000, he was going as a labourer in the tractor bearing No. HP 22 9153 and was engaged for loading and unloading of saria. It was alleged that the tractor was being driven by respondent No. 2 Satish Kumar alias Jattu in a rash and negligent manner and it met with an accident due to the rash and negligent driving of the driver and the petitioner suffered injuries, who had been under treatment and the petitioner alleged that he suffered 25% permanent disability. He claimed compensation to the extent of Rs. 15.00 lacs.

3. The appellant (respondent No. 1 before the learned Tribunal) as owner pleaded that the tractor was being driven by one Sanjay Kumar at the time of accident and as such he was a necessary party and he was not driving the tractor rashly or negligently. Respondent No. 2 pleaded that he was never the driver of the tractor and the case has also been registered against respondent No. 3 only, who was driving the vehicle at the relevant time. Respondent No. 3/driver was proceeded against ex parte. Respondent No. 4/Insurance Company pleaded that the petitioner was a gratuitous passenger and the vehicle was being used in violation of terms and conditions of the insurance policy. It was also pleaded that respondent No. 3 was not having a valid and effective driving license to drive the vehicle.

4. The petition was tried by the learned Tribunal, who held that the vehicle was being driven by respondent No. 3, who was not having a valid and effective driving license and since the vehicle was being used in violation of the terms and conditions of the RC and insurance policy since the vehicle was registered for agriculture purposes, therefore, the owner is liable to pay the amount of compensation in full and the Insurance Company was absolved of its liability.

5. I have heard the learned Counsel for the parties and have gone through the record of the case.

6. The submissions made by the learned Counsel for the appellant were that respondent No. 3 was not the driver. It was also submitted that the contents of the insurance policy have not been proved by the Insurance Company and, therefore, the Insurance Company cannot be absolved of their liability and as such the

Insurance Company is liable to pay the amount in full.

6. On the other hand, the learned Counsel for respondent No. 4 submitted that the vehicle was registered for agriculture purposes and since it was being used for carriage of saria, there was violation of the conditions of the RC and as such the Insurance Company was rightly absolved of its liability to pay any amount.

7. On appraisal of the record of the case, it is clear that there is ample evidence on record consisting of the statement of PW-4 Desh Raj petitioner that at the time of the accident, the vehicle was being driven by Kala alias Mohinder Singh, who was respondent No. 3. He clarified that on way one Jattu met, who was also sitting alongwith the driver at the relevant time. His statement finds corroboration from the copy of the FIR proved in evidence from the statement of PW-2 Santosh Raj MHC, who proved the same as Ext.PW-2/A. A perusal of the same shows that this report was lodged by one Hans Raj, brother of the claimant and not by the claimant himself in which it was alleged that the vehicle was being driven by driver Kala. This evidence has been sought to be rebutted by the statement of RW-1 Prithi Chand owner/respondent No. 1, who stated that the vehicle was being driven by Kala alias Sanjay. He stated that that Mohinder Singh was never the driver. However, on the basis of the statement of the petitioner coupled with the FIR, the learned Tribunal had rightly concluded that the vehicle, at the relevant time, was being driven rashly or negligently by respondent No. 3. An application had been moved during the trial of the case to impleaded said Sanjay Kumar alias Kala as a party but the same was rejected by the learned Tribunal on the ground that in case there is some evidence to show that the vehicle was being driven by said Sanjay Kumar only then he would be impleaded as a party and he was never impleaded as a party. The said findings of the learned Tribunal are based upon correct appreciation of evidence and law and these do not call for an interference.

8. Coming to the quantum of the compensation, no arguments were advanced as to how the compensation is excessive or calls for an interference by this Court and as such, in so far as the amount of compensation is concerned, it calls for no interference by this Court.

9. The only question worth consideration is as to whether the vehicle was being used in violation of the terms of the RC that the vehicle was registered for agriculture purposes and it could not be used for carriage of saria etc. There is no statement of the owner/respondent No. 1 Prithi Chand that the vehicle was not registered for agriculture purposes only or he had paid the insurance premium for using the vehicle for carriage of the material i.e. saria etc. in the present case. He admitted that a case has been made out against respondent No. 3 and stated that it may have been registered with the police but his driver was Sanjay Kumar. He admitted that he had filed a complaint in the Consumer Court as against respondent No. 4 claiming compensation which was dismissed but he denied that it was dismissed on the ground that the tractor was being driven by respondent No. 3, who was not having a valid and effective driving license. The copy of the said judgment is Ext.RX which is on record and a perusal of the same shows that there are such findings. Respondent No. 1 never filed any appeal against such order which has become final. This also proves that the vehicle was being driven by respondent No. 3. There is nothing on the record to show that the said driver i.e. respondent No. 3 was having any valid and effective driving license and the said driving license was never produced by respondent No. 3 since he was proceeded against ex parte or by respondent No. 1/owner of the tractor. In case, no particulars of the driving license are furnished by the owner, it cannot be got verified by the Insurance Company and as such, the Insurance Company is absolved of its liability to prove that the driver was not having a valid and effective driving license. The said driving license never saw the light of the day and until and unless it was produced by the owner or the driver, the Insurance cannot prove its validity. The owner has never claimed as RW-1 that respondent No. 3 was having a valid and effective driving license and his plea is only to this effect that it was being driven by another person Sanjay Kumar, but no evidence was led by him to prove that it was being driven by Sanjay Kumar and the evidence of the petitioner clearly proves that it was being driven by respondent No. 3.

10. The learned Tribunal has referred to the photocopy of the RC, which is attached with the file, though not exhibited, that it reveals that the tractor was registered for agriculture purposes and was exempted from token tax, but it was being used by respondent No. 1 for commercial purposes. The oral evidence also

shows that the tractor was being used for carriage of the material and respondent No. 1/appellant has never proved that he had paid the premium for using it for commercial purposes. The strict rules of evidence do not apply and oral evidence is sufficient to prove that it was being used for carriage of material and as such there is violation of the terms and conditions of the RC. I find no material on record to interfere in the said findings recorded by the learned Tribunal that there was violation since the driver was not having a valid and effective driving license and that it was being used for other purposes and as such I find no merit in the appeal filed by the appellant, which is dismissed accordingly. Parties are left to bear their own costs.

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