

{1}

S.B.C.M.A.No.1047/2001
Nena Ram Vs. Om Prakash & Ors.

S.B.C.M.A.No.1048/2001
Nena Ram Vs. Smt.Gawari Devi & Ors.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

J U D G M E N T

- (1) S.B. CIVIL MISC. APPEAL NO.1047/2001
Nena Ram Vs. Om Prakash & Ors.
- (2) S.B. CIVIL MISC. APPEAL NO.1048/2001
Nena Ram Vs. Smt.Gawari Devi & Ors.

Date of Judgment : 30th June, 2014

HON'BLE MR. JUSTICE SANDEEP MEHTA

Mr. Anil Bhandari, for the appellant.
Mr. D.S.Nimla, for the respondents.

<><><>

These two appeals have been preferred by the appellant Nena Ram, registered owner of the bus bearing registration No.RJ19.P.2939, against the common judgment cum award dated 19.9.2001 passed by the learned Motor Accident Claims Tribunal, Balotra in MAC No.94/1997 "Om Prakash Vs. Binja Ram & Ors." and MAC No.95/1997 "Smt.Gawari Devi & Ors. Vs. Binja Ram & Ors." whereby the claim applications filed by the claimants under Section 166 of the Motor Vehicles Act were partly allowed and the claimants were awarded compensation as below:

1. Claim Case No.94/1997 :-

Compensation of Rs.15,000/- on account of damage to the Rajdoot motorcycle bearing registration No.RJ04.M.5411.

2. Claim Case No.95/1997 :-

Compensation of Rs.2,67,000/- on account of death of Hari Ram.

Whilst allowing both the claim applications, the Tribunal held that the driver of the appellant's vehicle was not having an appropriate licence to drive the bus and thus, the insurance company was exonerated of the liability to satisfy the award and whilst directing it to make payment of the compensation to the claimants upfront it was given liberty to recover the same from the appellant. The appeal is directed against the finding recorded by the Tribunal whereby its defence was upheld and it was given liberty to recover the decretal amount from the appellant bus owner.

Facts in brief are that the deceased Hari Ram @ Hari Singh was proceeding from Asotara to Balotra on 2.5.1997 on Rajdoot motorcycle bearing registration No.RJ04.M5411 owned by his son Om Prakash. When he reached at the Sivana Fanta, the appellant's bus bearing registration No.RJ19.P2939 which was allegedly being driven in a rash and negligent fashion by its driver Binja Ram,

collided with the motorcycle and as a result, Hari Ram expired and the motorcycle was extensively damaged.

As mentioned above, two separate claim applications were filed by the claimants under Section 166 of the Motor Vehicles Act being claim application No.94/97 seeking compensation for the damage to the motorcycle and the other being claim application No.95/97 filed seeking compensation on account of the death of Hari Ram.

The appellant bus owner filed a reply to the claim application pleading that one Bhabhut Singh was engaged on the bus as his official driver. The bus in question had been handed over to Bhabhut Singh for driving the same. Bhabhut Singh might have passed the vehicle on to another person but the said action was without the knowledge and consent of the owner Nena Ram and thus, he was not responsible to satisfy the award.

The insurance company filed a written statement stating therein that the vehicle in question was being operated under the control and direction of its owner Nena Ram the appellant. It was also stated that the bus driver Binja Ram was not having valid licence for driving the vehicle and thus, citing breach of conditions of the insurance policy, it sought exoneration from the liability to satisfy the award.

The Tribunal framed the following issues for consideration:

1. As to whether on 2.5.1997, Binja Ram drove the bus No.RJ19.P2939 owned by the appellant Nena Ram in a rash and negligent fashion and caused the accident?
2. As to whether Hari Ram expired as a result of the injuries received by him in the said accident?
3. As to whether the claimants are entitled to receive the compensation as per the claims?
4. As to whether the driver of the bus was not having an appropriate licence for driving the bus?
5. As to whether the non-claimant No.2 (the appellant herein) had engaged Bhabhut Singh for driving the bus and if so, the effect thereof on the claim?
6. Relief?

The claimants examined four witnesses in support of the claim applications.

The appellant examined Bhabhut Singh and himself in support of his defence. Dr.Anil Chouhan was examined on behalf of the insurance company. The Police documents pertaining to the chargesheet filed after investigation of the FIR registered in relation to the accident were also filed on record.

The Tribunal decided the issues No.1, 2 and 3 in favour of the claimants and against the non-claimants. Issue No.4 was decided in favour of the insurance company and the issue No.5 was decided against the appellant owner of the offending vehicle.

Both the claim applications were partly allowed and the claimants were awarded compensation as stated above and the appellant was held responsible to satisfy the award whilst exonerating the insurance company from the liability to satisfy the award. The insurance company was directed to satisfy the award upfront and was given liberty to recover the same from the appellant.

The appellant has approached this Court by way of these two appeals assailing the finding recorded by the Tribunal on the issue No.5 whereby the appellant's defence regarding the vehicle having been handed over to Bhabhut Singh for driving the same and the appellant owner not being responsible to satisfy the award was decided against him and so also against the exoneration of the insurance company.

Shri Anil Bhandari learned counsel appearing for the appellant vehemently contended that the burden of proving the defence that the bus was being driven by a person not having a valid licence was on the insurance company. The

insurance company failed to lead any evidence to show that the appellant owner of the bus knowingly permitted his vehicle to be driven in violation of the policy conditions. He submitted that the appellant examined Bhabhut Singh in defence and proved that he had engaged the aforesaid Bhabhut Singh to drive his bus on salary basis. On the day of the occurrence, Bhabhut Singh developed abdominal pain and thus he handed the bus over to Binja Ram for driving without the knowledge and consent of the appellant. He, therefore, urged that the appellant was not liable to satisfy the award. He relied on the following decisions in support of the argument that the burden of proving that the vehicle was being used in violation of the policy conditions that is to say that the driver was not having a valid licence to drive the vehicle was on the insurance company:-

- 1985(2) TAC 396 (SC)
Narcinva V. Kamat & Ors. etc. Vs. Alfredo Antonio Doe Martins & Ors.
- 1992(2) TAC 393 (Karnataka)
Oriental Insurance Co.Ltd. Vs. K.R.Shiva Prakash
- 1998 ACJ 768
New India Assurance Co.Ltd. Vs. Vidya Bai & Ors.
- 2000 ACJ 1575
United India Insurance Co.Ltd. Vs. Balwant Singh & Ors.
- I(2000) ACC 335 (DB)
National Insurance Co.Ltd. Vs. Mainabai & Ors.

- 2001 ACJ 374
New India Assurance Co.Ltd. Vs. Mumtaj & Ors.
- 2001 ACJ 730
New India Assurance Co.Ltd. Vs. Kiran Jain & Ors.
- 2001 ACJ 800
United India Insurance Co.Ltd. Vs. N.Srinivasa & Anr.
- 2004(3) WLC (Raj.) 503
National Insurance Co. Vs. Smt.Sheela & Ors.
- 2004(2) TAC 208 (J&K)
United India Insurance Co.Ltd. Vs. Narayan Dutt Sharma & Ors.

As per him, the insurance company did not produce and exhibit the licence of the driver Binja Ram on record and thus, the plea taken by it that the vehicle was being driven by a driver without a valid licence was wrongly decided in favour of the insurance company.

Per contra, Shri D.S.Nimla learned counsel appearing for the insurance company vehemently contended that the defence taken by the appellant regarding having handed his vehicle over to Bhabhut Singh and Bhabhut Singh in turn having passed the same on to Binja Ram without his knowledge and consent is an absolute afterthought and a figment of imagination. He contended that an FIR was also registered in relation to the accident and during the investigation of the said FIR, the appellant did not put forth any plea that the driver authorised by him to drive the bus was

Bhabhut Singh. He further submitted that when the bus in question was seized by the Police, no person by the name of Bhabhut Singh was found in it. Thus, as per him, the plea of ignorance raised by the appellant is absolutely conjectural and was rightly discarded. He further submitted that in the charge-sheet filed by the Police after investigation of the FIR, two of the offences alleged are 3/181 and 3/185 of the Motor Vehicles Act. The offence under Section 181 of the Motor Vehicles Act is for driving the vehicle without a licence. The offence under Section 185 of the Motor Vehicles Act is for drunken driving. Learned counsel submitted that the Tribunal rightly exonerated the insurance company from the liability to satisfy the award and held the appellant responsible for the same. He thus contended that the impugned award does not call for any interference and prayed that the appeal be dismissed.

Heard and considered the arguments advanced at the bar and perused the impugned award as well as the record.

The first argument which was advanced by the learned counsel for the appellant is regarding the defence taken by the appellant that he had engaged and designated one Bhabhut Singh for driving his bus and Bhabhut Singh

without his knowledge and permission, handed the same over to Binja Ram, who caused the accident. In this regard, the evidence of the appellant himself and Bhabhut Singh needs to be examined. The appellant examined himself as NAW.2 before the Tribunal. In his testimony, he stated that the bus in question was being operated on the route between Balotra to Surat. He had formally engaged Bhabhut Singh as the designated driver on his bus. He claimed that he used to pay Rs.3000/- monthly salary and Rs.100/- daily allowance to Bhabhut Singh for driving the bus.

He also gave a power of attorney to one Hindu Singh for having the bus released from court. In cross-examination, the witness agreed to the specific suggestion that any action taken by Hindu Singh in relation to the bus was binding on him. He feigned ignorance as to whether any notice under Section 133 of the Motor Vehicles Act was given to Hindu Singh or not. He stated that he came to know that the bus met with an accident after about 2-3 days. He admitted that he became aware that Binja Ram was driving the bus on the date of the accident. He did not specifically deny that Binja Ram was driving the bus without his consent. A very significant fact elicited in his cross-examination was that he admitted owning 3 to 4 buses which were being operated on

different routes. He further admitted that he kept accounts of the salaries paid to the drivers operating his buses. In the next breath, he resiled from this admission. He admitted that he did not make any complaint regarding investigation conducted by the Police in relation to the accident.

Significantly enough, the appellant through a power of attorney had authorised one Hindu Singh to do all the legal and official acts in relation to the bus in question. The power of attorney was executed on 6.5.1997 i.e. after four days of the accident. Hindu Singh received the notice given by the investigating officer under Section 133 of the Motor Vehicles Act on 6.5.1997 and in reply mentioned that on 2.5.1997 i.e. on the date of the accident, Binja Ram was engaged as driver on the bus. Thus, it is evident that upto the date on which the chargesheet was filed against Binja Ram i.e. 18.5.1997, the appellant did not inform any authority that the designated driver of his bus was Bhabhut Singh, who handed the bus over to Binja Ram without the owner's consent. The bus was seized on 2.5.1997 itself. Had there been any iota of truth in the theory that Bhabhut Singh was engaged to drive the bus then he should have been present in the bus. Had he been so present, he would have signed the documents prepared by the Police on the very same day. None of the

documents prepared by the Police bears his signature. The insurance company's witness NAW.1 Dr.Anil Chouhan specifically alleged that the driver of the bus was not having a valid licence to drive the bus. He also alleged that Binja Ram was driving the bus after consuming liquor.

From the aforesaid facts, this Court is of the opinion that the appellant miserably failed to prove before the Tribunal that he had engaged Bhabhut Singh to drive his bus on the date of the accident. The defence is obviously an afterthought and a piece of concoction created in order to escape liability in the claim proceedings. The appellant admitted that he was a bus operator and owned 3 to 4 buses. In this background, it is impossible to believe that he did not keep accounts regarding the salaries paid to the drivers engaged by him. By producing his account books, he could very well have proved that Bhabhut Singh was the person, who was officially engaged by him as a driver on the offending bus. The testimony of Bhabhut Singh, who was examined as NAW.2 is also unbelievable. He, in his cross-examination stated that Binja Ram was sitting in the bus as a passenger. He allegedly developed abdominal cramps and thus, took a tablet and handed the bus over to Binja Ram for driving. The story is palpably false and unbelievable and was rightly discarded by

the Tribunal. Had he been present in the bus, then he would have signed the documents prepared by the Police.

This Court is also of the opinion that the story put forward by this witness is absolutely unbelievable and concocted.

Thus, the Tribunal was justified in holding that Binja Ram was driving the bus on the fateful day with the consent and knowledge of the owner i.e. the appellant Nena Ram.

Now coming to the next argument regarding the burden of proving the defence of invalid licence. There cannot be two views about the proposition advanced by the learned counsel for the appellant that the burden of proving the defence of ineffective and inappropriate licence and regarding the breach of policy conditions is upon the insurance company. However, in the present case, the insurance company has proved the same beyond all manner of doubt. The statement of the insurance company's witness is categorical in this regard. NAW.2 Bhabhut Singh in his cross-examination clearly admitted that he did not know as to whether Binja Ram was having a licence or not. Binja Ram himself did not appear and file any written statement before the Tribunal. The charge-sheet which was filed against Binja Ram in the court

concerned after investigation of the FIR was proved as Ex.5 at the trial. The charge-sheet was filed for the offences under Section 304A IPC and Sections 3/181 and 3/185 of the Motor Vehicles Act. The offence under Section 3/181 of the Motor Vehicles Act is for driving the vehicle without a proper licence. No licence of Binja Ram was produced on record by the non-claimants to dispute the conclusion in the charge-sheet that the driver of the vehicle was not having a proper licence. The burden of proof can be discharged in many fashions. The facts mentioned in the police charge-sheet can also be used for discharging this burden in an appropriate case. The present is such a case. Thus, this Court is of the opinion that the insurance company by pertinent and reliable evidence proved before the Tribunal that the bus driver Binja Ram was not having a valid licence authorising him to drive the vehicle in question when it meets with the accident. The judgments cited by the learned counsel for the appellant are totally distinguishable on facts and thus are of no avail to him.

As an upshot of the above discussion, the judgment and award under challenge cannot be said to be illegal, unjust, perverse or contrary to the material available on record or based on inappropriate appreciation of the evidence so as to call for any interference in these appeals.

{14}

S.B.C.M.A.No.1047/2001
Nena Ram Vs. Om Prakash & Ors.

S.B.C.M.A.No.1048/2001
Nena Ram Vs. Smt.Gawari Devi & Ors.

The appeals thus being devoid of any merit are
hereby rejected.

No order as to costs.

Record of the Tribunal be sent back forthwith.

A copy of this order be placed in the connected
appeal.

(SANDEEP MEHTA), J.

/tarun/