

National Insurance Co. Ltd. Lucknow ... vs Shiva Vishwakarma Minor Thru. Grand ... on 1 May, 2025

Author: Abdul Moin

Bench: Abdul Moin

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?A.F.R.

Neutral Citation No. - 2025:AHC-LK0:25178

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 895 of 2016

Appellant :- National Insurance Co. Ltd. Lucknow Thru. Regional Manager

Respondent :- Shiva Vishwakarma Minor Thru. Grand Father Devi Dayal And Ors

Counsel for Appellant :- Satyajit Banerji

And

Case :- FIRST APPEAL FROM ORDER No. - 896 of 2016

Appellant :- National Insurance Co. Ltd. Lucknow Thru. Regional Manager

Respondent :- Shiva Vishwakarma Minorthru. Grand Father Devi Dayal And Ors

Counsel for Appellant :- Satyajit Banerji

Hon'ble Abdul Moin,J.

1. Heard Shri Satyajit Banerji, learned counsel for the appellant.

2. Learned counsel for the appellant states that the instant appeal as well as F.A.F.O. No.896 of 2016 pertain to the same accident and commons ground have been taken in both the appeals and as such, both the appeals can be heard and decided together.

3. Accordingly, the Court proceeds to hear and decide both the appeals by way of a common judgment. For the sake of convenience, the facts of F.A.F.O. No.895 of 2016 are being taken.

4. Under challenge is the judgment and award dated 19.05.2016 passed in Claim Application No.206 of 2016 in Re: Shiva Vishwakarma and Others vs. Rafiq Khan and Others by the learned Motor Accident Claims Tribunal / Additional District Judge, court no.5, Unnao, whereby the learned Tribunal has awarded a sum of Rs.4,04,000/- to the claimants along with interest at the rate of 7% per annum.

5. In F.A.F.O. No.896 of 2016, the learned Tribunal has awarded an amount of Rs.4,52,000/- along with interest at the rate of 7% per annum.

6. The contention of learned counsel for the appellant is that an accident is said to have occurred on 17.05.2015 in which Shri Sunil Kumar and his wife Smt. Madhuri died, who are the parents of the claimant No.1 Shiva Vishwakarma and the son and daughter-in-law of claimants No.2 & 3.

7. The accident is said to have occurred when Shri Sunil Kumar along with his wife were going on a motorcycle on the Lucknow-Kanpur road at 09:30 a.m. and a truck no. UP 78 BT 3046 hit them from behind with the result that both of them were grievously injured and died.

8. Upon filing of the claim application, the learned Tribunal by means of the award has awarded the amount, as aforesaid, to the claimants.

9. Specific finding has been given that the driver of the truck namely Shri Hori Lal was having a valid driving licence and the truck was also insured and thus, it is the insurance company / appellant who has been directed to pay the above awarded amount.

10. Raising a challenge to the award to the extent that the learned Tribunal has held that the driver of the truck namely Shri Hori Lal was having a valid driving license, it is argued that Shri Hori Lal was not having a valid driving license for the purpose of driving the transport vehicle, in this case the truck, and, thus, it is argued that the learned Tribunal has patently erred in holding that the driver of the truck was having a valid driving license and consequently, considering the aforesaid error committed by the learned Tribunal, it is contended that the insurance company is not liable to pay the aforesaid amount of award rather the owner of the truck should pay the same.

11. In support of his arguments, Shri Banerji has placed reliance on the extract of driving license and verification of Form 54, a copy of which has been filed as annexure 1 to the stay application.

12. Shri Banerji categorically states that the extract of the driving licence and verification of form 54, as filed as annexure 1 to the stay application, was never filed before the learned Tribunal and the

same has been filed for the first time in the instant appeal. He states that the appeal being a continuation of proceedings, he is perfectly empowered to file the said evidence in the instant appeal which in fact he has done.

13. It is argued that a perusal of the aforesaid report would indicate that on the date of the accident i.e. 17.05.2015, Shri Hori Lal, the driver of the truck, was not having a valid and effective driving license for a transport vehicle as emerges from a verification of the driving license as done from the Transport Authority Hamirpur which indicates that his driving license was having an endorsement for transport vehicle earlier w.e.f. 30.03.2009 to 19.03.2012 and after renewal from 30.10.2015 to 29.10.2018 meaning thereby that on the date of the accident i.e. 17.05.2015, the driving license of Shri Hori Lal was not valid for driving a transport vehicle which fact has not been appreciated by the learned Tribunal and consequently, the insurance company is not liable to pay the awarded amount to the claimants rather it is the owner who is liable to pay the said amount.

14. No other argument has been urged.

15. Having heard the learned counsel for the appellant and having perused the record, it emerges that upon filing of the claim application, the learned Tribunal had framed various issues of which issue no.2 was as to whether on the date and time of accident, the driver of the truck was having a valid and effective driving license? The finding in this regard has been given by the learned Tribunal after examining driving license No.9112003573 issued on 26.05.2007 having an old license No. H-879/Hamirpur/2007 which was valid from 30.10.2012 to 29.10.2015 and the same is also available on record as paper No. 10ga/6.

16. The Court has perused paper No. 10ga/6 from the records of the learned trial court.

17. A perusal of the aforesaid paper would indicate that it is a form of driving license duly signed by the Licensing Authority and the driving license bears the No.9112003573 having been issued on 26.05.2007 and valid up to 29.10.2015. The license also indicates that the holder of the licence is licensed to drivethroughout India the vehicles of the following descriptions which also includes Light Motor Vehicle, Medium Good Vehicle, Medium Passenger Motor Vehicle, Heavy Good Vehicle and Heavy Motor Passenger Vehicle. The accident having occurred on 17.05.2015 and the license being valid up to 29.10.2015 makes it apparent that the driver of the vehicle involved in the accident was having an effective and valid driving license on the date of the accident for driving a Heavy Good Vehicle, in this case a truck, and thus, it is apparent that a specific finding of fact had been given by the learned Tribunal.

18. Incidentally, it is not the case of the appellant that the driving license filed before the learned Tribunal is either fake or forged and no case was also set up by the insurance company in this regard before the learned Tribunal.

19. So far as the extract of driving licence and verification of form 54 is concerned, as is sought to be filed as an additional evidence in the instant appeal, whether for the first time the same can be filed would have to be considered.

20. Order 41, Rule 27 of C.P.C. pertains to production of additional evidence in appellate court. The said provision provides that the parties to an appeal shall not be entitled to produce additional evidence but if -

(a) the court from whose decree the appeal is preferred has refused to admit evidence, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the appellate court requires any document to be produced then the appellate court may allow such evidence or document to be produced.

21. Sub rule (2) of Rule 27 of Order 41 of C.P.C. also provides that wherever additional evidence was allowed to be produced by an appellate court, the court shall record the reason for the said admission.

22. Although, in his argument, Shri Banerji has urged that annexure 1 to the stay application is being filed as an additional evidence in the instant appeal but a perusal of the affidavit along which annexure 1 has been filed would indicate that the said document has not been filed as an additional evidence rather has only been made an annexure to the stay application. Interestingly, the entire affidavit in support of the stay application only talks about the driving license that had been filed before the learned Tribunal.

23. Even if, considering the arguments as urged by the learned counsel for the appellant, the said annexure is said to be taken as an "additional evidence" as provided under Order 41, Rule 27 of C.P.C., the fact would remain that nowhere does the affidavit indicate that the learned trial court has refused to admit the annexure as an evidence or notwithstanding exercise of due diligence by the appellant, he could not get hold of annexure 1 and neither is the said annexure accompanied by the application under the said provision for treating annexure 1 to be an additional evidence and consequently, this Court is not impressed with the argument of the learned counsel for the appellant for treating annexure 1 filed along with application of stay as an additional evidence.

24. In this regard, it would be apt to refer to the judgments of the Hon'ble Supreme Court in the case of Sanjay Kumar Singh vs. State of Jharkhand 2022 (7) SCC 247, Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi & Ors. 1987 (1) SCC 227, Jagdish Prasad Patel(D) Thr. Lrs. vs. Shivnath 2019 (6) SCC 82 and Union of India vs. Ibrahim Uddin & Another 2012 (8) SCC 148.

25. However, considering the insistence on the part of learned counsel for the appellant to consider the said document, the Court proceeds to consider the said document also.

26. So far as the document which has been filed along with the appeal is concerned, which is said to be the verification from the Transport Authority Hamirpur, it emerges that the said verification does not pertain to the driving license which has been filed before the learned Tribunal i.e. having

driving license No.9112003573.

27. Learned counsel for the appellant has also failed to indicate as to how the aforesaid verification can be related with the driving license which had been filed before the learned Tribunal and thus, in absence of any evidence being led before the learned Tribunal of the driving license filed before it of Shri Hori Lal being fake or forged and the said driving license not having been controverted in any manner, consequently, it cannot be said that the learned Tribunal has committed any error in holding that the driver namely Shri Hori Lal was having a valid and effective driving license on the date of the incident.

28. Keeping in view of the aforesaid discussion, no case for interference is made out.

29. Accordingly, the appeal is dismissed.

30. Let the trial court record of the appeal be sent back as per rules.

Order Date :- 1.5.2025 S. Shivhare