

Suresh Mohan Chopra vs Lakhi Prabhu Dayal And Others on 30 July, 1990

Equivalent citations: 1991ACJ1, AIR1990SC1979, 1990SUPP(1)SCC696, AIR 1990 SUPREME COURT 1979, (1991) 2 GUJ LH 322, 1991 SCC (CRI) 654, 1991 SCD 233, (1991) 1 ACJ 1, (1990) 2 TAC 632, 1990 SCC (SUPP) 696, AIRONLINE 1990 SC 35

Bench: N.D. Ojha, S.C. Agrawal

JUDGMENT

1. Heard learned Counsel for the parties.
2. Special leave granted. The appeal is taken up for final hearing with the consent of learned Counsel for the parties.
3. The appellant filed a claim for compensation on account of injuries received by him in an accident which took place on 30th November, 1977. On that date, the appellant was going on his scooter which met with an accident with a motor cycle which was being driven by respondent No. 1 and was owned by respondent No. 2. The Tribunal awarded a sum of Rs. 30,000/- as compensation to the appellant against respondent Nos. 1 and 2, namely, the driver and owner of the motor cycle as also against the New India Assurance Co. Ltd., respondent No. 3, with whom according to the appellant the motor cycle stood insured at the time of the accident.
4. Aggrieved by the award of the Tribunal, the insurance company preferred an appeal before the High Court which was allowed and the award as against the insurance company has been set aside. The High Court has taken the view that it had not been established that respondent No. 1 had a driving licence at the tune of the accident and consequently the insurance company could not be held liable.
5. The appellant has challenged the judgment of the High Court in the present appeal on the ground that the finding of the Tribunal that respondent No. 1 had a driving licence at the relevant time could not, in law, on the facts of the instant case, be reversed by the High Court.
6. Having heard learned Counsel for the parties, we are of the opinion that there is substance in the submission made by the learned Counsel for the appellant. In the instant case, the driver respondent No. 1 had been produced as its witness by the insurance company itself and he categorically stated that he had a driving licence at the relevant time issued by the Transport Authority at Rajpur Road in 1977. It is true that the driving licence itself was not produced by the respondent No. 1 but his explanation in this regard was that the same being for one year only he had destroyed it after the expiry of that period. No evidence was produced to show that this explanation was wrong. Further,

no other evidence was produced on behalf of the insurance company on which, admittedly, the burden of proof lay in support of the plea raised by it that respondent No. 1 had no driving licence at the relevant time on the basis of which it could be held that the said respondent did not have a driving licence. No record or even a certificate was produced from the Transport Authority indicating that in 1977 no licence was granted to respondent No. 1. In this state of evidence and particularly when the driver was a witness of the insurance company itself, there was no alternative for the Tribunal but to accept the statement of the driver that he had a licence at the relevant time and the High Court apparently committed an error of law in reversing the finding of the Tribunal simply because the driving licence was not produced.

7. In the result, this appeal succeeds and is allowed. The judgment of the High Court dismissing the claim of the appellant as against the insurance company, respondent No. 3, is set aside and the award of the Tribunal is restored. The appellant shall be entitled to his costs.