

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 109 OF 2003

SHIV RAM & ORS.

Appellant (s)

VERSUS

NEW INDIA ASSURANCE CO. LTD. & ORS.

Respondent(s)

WITH Civil Appeal NO. 110 of 2003
(With office report)

Date: 20/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr. Subhash Sharma, Adv. (N.P.)

For Appellant No.1
in C.A. No. 110/2003

Mr. Salil Paul, Adv.
Ms. Indra Sawhney, Adv.

For Respondent No. 1
in C.A. No. 109/2003

Mr. Salil Paul
Ms. Indra Sawhney, Adv.

Mr. Ashok Mathur , Adv
Rr-Ex-Parte , Adv
Mr. Subhash Sharma (N.P.)

For R-1

Mr. Ashok Mathur, Adv.

UPON hearing counsel the Court made the following
O R D E R

These two Appeals, one at the instance of the claimants (C.A. No. 109/2003) and the other at the instance of the Insurance Company (Appeal No. 110/2003) were taken up on July 15, 2010. On that date, counsel for the Insurance Company (Appellant in Civil Appeal No. 110/2003) and one of the respondents in the connected Appeal, C.A. No. 109/2003 was present. Also present was the counsel representing the owner of the vehicle, respondents in both the appeals. However, the claimants being the appellants in C.A. No. 109/2003 and one of the respondents in C.A. No. 110/2003 remained unrepresented. In the order sheet for that date, however, the claimants are shown represented by counsel. That is an error, that needs to be pointed out and corrected. The office is directed to correct the order sheet of July 15, 2010 and to show the claimants viz., Shiv Ram & Ors. not being represented in either of the two appeals.

These appeals are dismissed in terms of the Signed Order.

(V.K. Tiwari)

P.A.

(Signed order is placed on the file)

SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

(R.K. Sharma)

Court Master

CIVIL APPEAL NO. 109 OF 2003

SHIV RAM & ORS.

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VERSUS

NEW INDIA ASSURANCE CO. LTD. & ORS.

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WITH Civil Appeal NO. 110 of 2003

O R D E R

C.A. No. 109/2003

No one appears for the appellants/claimants to press the appeal for the second consecutive day. The appeal is dismissed for non-prosecution.

C.A. No. 110/2003

Counsel appearing for the appellant (the Insurance Company) submitted that the driver of the vehicle that caused the accident had only a learner's licence. The vehicle being driven by someone with only a learner's licence was in breach of the terms of the insurance policy and hence, no liability for payment would attach to the Insurance Company. In support of the submissions, he relief upon a two-Judge decision of this Court in New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe & Ors. [1996 (2) SCC 328].

We are unable to accept the submission. In the first

-: 2 :-

place, neither the Tribunal nor the High Court has accepted the allegation, now being made before this Court, that the driver of the vehicle that caused the accident had only a learner's licence and not a permanent regular licence.

Secondly and more importantly, the legal position on the

issue is now settled by a three-Judge bench decision of this

Court in National Insurance Company Ltd. Vs. Swaran Singh &

Ors. (2004) 3 SCC 297. In Swaran Singh, it was held and

observed vide paragraph 93, as follows:-

"93. The Motor Vehicles Act, 1988 provides a grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by learner subject to the conditions mentioned in the licence, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act."

In Swaran Singh, the Court also referred to the earlier decision in Mandar Madhav Tambe, relied upon by the appellant and in regard to the earlier decision made the following observation in paragraph 95:

"95. Mandar madhav Tambe case, whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an exclusion clause in the insurance policy wherein it was made clear that the insurance company, in the event of an accident, would be liable only if the vehicle was

-: 3 :-

being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The question as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered in the peculiar fact situation obtaining therein. Therein it was stated that "a driving licence" as defined in the Act is different from a learner's licence issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein."

In this case, the insurance policy is not on record but what is stated in that regard in the synopsis to the brief is as follows:-

"Persons or classes of persons entitled to drive any of the following:-

(a) The insured.

(b) Any other person who is driving on the insured's order or with his permission.

Provided that the person driving holds or had held and has not been disqualified from holding an effective driving license with all the required endorsements thereon as per the Motor Vehicles Act,

1988 and the rules made thereunder for the time being in force to drive the category of motor insured."

It is, thus, evident that the appellant cannot derive any benefit from the decision in Mandar Madhav Tambe's case.

We, thus, see no merit in this appeal. It is accordingly dismissed.

Since there is no representation from the side of the claimant, we are not making any order as to costs.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

New Delhi;
Dated: July 20, 2010.