IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.788 of 2002 (O&M)
Date of decision: 21.07.2015

New India Assurance Company Limited ….Appellant

Versus

Kuldeep Kaur and others ….Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Ashwani Talwar, Advocate
along with Mr. Jasjit Singh, Advocate
for the appellant.

K.C. PURI J. (Oral)

This is an appeal directed by insurance company against the award dated 07.11.2001, passed by Sh. Mohinder Pal, Motor Accident Claims Tribunal, Fatehgarh Sahib, vide which the claim petition was partly accepted and a sum of Rs.2,68,800/- was allowed to the claimants.

The claimants have filed the claim petition claiming compensation on account of death of Harbhajan Singh in a motor vehicular accident on 20.06.1999. It is alleged that Harbhajan Singh along with his minor son and Baljit Singh was returning to his village Panjoli Khurd on scooter bearing No.PB-52-4291 LML Vespa. Harbhajan Singh was driving the scooter whereas Baljit Singh was a pillion rider along with the minor son of Harbhajan

Singh. When they reached at a distance of half kilometer from Behlolpur in front of the motor of Jai Singh son of Maghar Singh within the revenue limits of village Behlolpur, Tehsil and District Fatehgarh Sahib, then a Tata Sierra car bearing No.DL-9C-A-4051 driven by respondent No.1, in a rash and negligent manner, hit the scooter of Harbhajan Singh and caused the accident. As a result of which, Harbhajan Singh fell down from the scooter and received multiple injuries and died at the spot. It is further alleged that the accident was caused due to the sole negligence of respondent No.1. Sukhdev Singh witnessed the accident and lodged a report with the police of Police Station Mulepur.

The claim petition resisted by respondent No.1-driver of the offending vehicle, respondent No.3-insurance company. However, respondent No.2-owner of the offending vehicle did not appear despite service and as such, he was proceeded ex parte. Respondent No.1 in his written statement denied the accident with the offending vehicle and also his liability to pay the amount of compensation. Whereas, respondent No.3 filed the written statement taking the preliminary objections that driver of the offending vehicle was not holding a valid driving licence at the time of accident. The factum of accident was also denied.

From the pleadings of the parties, following issues were framed:-

1. Whether the respondent No.1 while driving Tata

Siera No.DL-9-CA-4051 owned by respondent No.2 and insured with respondent No.3 rashly and negligently on 20.06.1999 at about 6.45 P.M., in the area of village Behlolpur caused the death of Harbhajan Singh? OPP.

2. If issue No.1 is proved to what amount of compensation the claimants are entitled to and from whom? OPP.

3. Whether respondent No.1 was not having an effective driving licence? OPR.

The learned Tribunal returned the finding on Issues No.1 and 2 in favour of the claimants and Issue No.3 was decided against the insurance company regarding driving licence.

The insurance company has directed the appeal challenging the finding on Issue No.3.

Service of respondent No.5 was dispensed with. Today the case was fixed for summoning of respondent No.6 again, but learned counsel for the appellant/insurance company has submitted that the owner i.e. respondent No.6 has already been proceeded against ex parte before the Tribunal and as such, service of respondent No.6 may be dispensed with. So, the service of respondent No.6 stands dispensed with.

Learned counsel for the appellant has submitted that the original licence produced by the claimant in respect of respondent No.1 was not valid and an application under Order 41 Rule 27 CPC has been moved to prove the fact that original driving licence was not a valid document.

In this case, the learned Tribunal has given a finding that renewal made by Licensing Authority, Patiala is genuine but have also given a finding that insurance company does not produce any verification from the Licensing Authority, Bhopal that driving licence is not a genuine document. Learned counsel for the appellant/insurance company wanted to make out a case for recovery of the amount from the owner. It is undisputed during the course of arguments that amount has already been paid. The insurance company has not only to prove the fact that driving licence was fake but has to prove the fact that the owner has the knowledge of the fact that driving licence was fake. Before the Tribunal the insurance company has not produced any evidence that driving licence produced by the claimant is not a genuine document. Proper opportunity has been given to the insurance company to produce the evidence. So, at the appellate stage, no case is made out for allowing the application for leading additional evidence. So, the application for leading additional evidence is declined. There is no evidence that driving licence is a fake document, so, the present appeal also stands dismissed.

(K.C. PURI)
21.07.2015 **JUDGE**
yakub