In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.1769 of 1997

.....

Date of decision:6.4.2015

New India Assurance Company Ltd.

.....Appellant

v.

Rajinder Kumar Tamach and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. R.N. Singal, Advocate for the appellant.

Mr. Munish Puri, Advocate for respondent No.1.

None for respondent No.2.

Mr. R.S. Chauhan, Advocate for respondent No.3.

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Inderjit Singh, J.

This appeal has been filed by New India Assurance Company Ltd. (hereinafter referred to as `the Insurance Company') against Rajinder Kumar Tarnach-claimant, Kuldip Chand-Driver and Subedar Nehar Singh-Owner challenging the impugned award dated 20.5.1997 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as `the Tribunal'), vide which the claim petition filed by claimant-Rajinder Kumar Tarnach was allowed and an award of ₹30,450/- has been passed in his favour and against the respondents, who were held liable to pay it jointly and severally along with interest at the rate of 12 per cent per annum from 23.8.1991 i.e. the day on which the petition was moved.

Notice of motion was issued in this case.

Mr. Munish Puri, learned Advocate has appeared on behalf of respondent No.1-claimant and Mr. R.S. Chauhan, learned Advocate has appeared on behalf of respondent No.3-owner of the offending vehicle and contested this appeal.

I have heard learned counsel for the parties and have gone through the record.

At the time of arguments, learned counsel for the appellant-Insurance Company argued only on one point that the Tribunal has wrongly held the Insurance Company liable as the claimant had not produced any insurance policy before the Tribunal. He also argued that the insurance policy which the PWs said to have been issued regarding the offending vehicle was not issued by the appellant for the offending vehicle, but for a scooter. Therefore, he argued that the Insurance Company is not liable to pay the claim amount.

On the other hand, learned counsel for respondent No.1-claimant argued that the award has been rightly passed by the Tribunal and correctly held liable the Insurance Company. The PWs from the DTO office have deposed that they had made the entry in their record after seeing the insurance policy. The learned counsel for respondent No.1 argued that there is no cross-examination by the Insurance Company on this point to the PWs. Further, no where the Insurance Company has stated in the written statement that the vehicle has not been insured with them. He further argued that even RW-3 Branch Manager of the Insurance Company has come to the witness box, but had not produced the insurance policy. Therefore, he argued that there being no merit in the appeal, it should be dismissed.

I have heard learned counsel for the parties and have gone through the record.

The brief facts of the case are that claimant-respondent No.1, aged about 37 years, is a practicing lawyer at Pathankot and his total income is ₹7,000/- per month from this profession as well as from agriculture land. It is stated that on 26.2.1991, he was driving scooter No.PAH-189. One Ashwani Kumar was sitting on the pillion of the scooter. The scooter was on the correct side of the road. It was being driven at a moderate speed. When they reached near the Railway Station, Bharoli on the main G.T. Road, a mini bus bearing registration No.PB-06-1090, which was being driven very rashly and negligently by respondent No.1-Driver, was coming from the opposite side i.e. from Pathankot. It was at a high speed. Respondent No.1-Driver did not blow any horn. He diverted the bus on its wrong side and hit the scooter, which was being driven by him. He fell down on the road and sustained multiple injuries. The scooter was badly damaged. Ashwani Kumar also received injuries badly, who succumbed to the injuries. Manoj Kumar was the eye witness, who lodged the report with the Police and case FIR No. 91 dated 26.2.1991 was registered with Police Station City Pathankot. In this case, the claimant claimed ₹2 Lacs for pain and suffering and loss of enjoyment of life, ₹5 Lacs for loss of earnings, ₹5,000/- towards repair of the damaged scooter and ₹15,000/- for medical expenses on account of the injuries i.e. fracture of index finger of left hand, multi-facial injuries near temple, right eye and chin, head injuries on the right side, muscle injuries on the right shoulder and other multiple injuries.

Respondent No.2-Driver filed reply of the application stating that Mini Bus was insured with New India Assurance Company, Gurdaspur. He stated that in fact the Mini bus was being driven on the correct side of the road at a moderate speed and Punjab Roadways bus was coming ahead of the scooter and without waiting for the clearance of the road, the scooter driver all of a sudden gave a pass to the Punjab Roadways bus at a high speed and lost control of the scooter and fell on the ground. The scooter was being driven rashly, negligently and without blowing any horn. Respondent No.3-Insurance Company (appellant herein) filed separate reply in the form of the written statement taking the preliminary objections that the driver of the Mini Bus alleged to have been involved in the accident did not have a valid driving licence. There was no valid fitness certificate and route permit for plying the mini bus. It was not being plied in accordance with rules, terms and conditions of the route permit and fitness certificate. It was also denied that the claimant sustained injuries in vehicular accident on account of the rash and negligent driving of the mini bus. The other averments were also denied. The Tribunal after discussing the evidence produced by the parties awarded an amount of ₹30,450/- along with interest @12% per annum for which all the respondents were held liable jointly and severally.

A perusal of the record shows that the claimant produced the witness from the DTO office. As per RW-1 Milap Chand, Clerk from the office of District Transport Officer, Gurdaspur, who had brought the summoned record regarding the registration of the vehicles, Mehar Singh son of Kashmir Singh-respondent No.2 is the registered owner of Mini Bus No.PB-06-1090. According to the record, this vehicle was insured with respondent No.3 (appellant herein) upto 12.9.1991 with cover note No.446683. It was also stated that all the entries in the register are made on the basis of the original documents submitted by the applicant for registration of the vehicle and entries bear the signatures of the District Transport Officer, Gurdaspur as well. RW-2 Charanjit Kaur, Senior Clerk in the office of Regional Transport Authority, Jalandhar, who was earlier working as Clerk in the office of DTO, Gurdaspur from 1987 to 1995 deposed that the entries in the register for registration of vehicles are in her hand. She also stated that entries in the register were made as per original record and they were made after verifying the facts from the documents. RW-4 Surinder Mohan Dudhra also deposed that the bus was insured with respondent No.3-Insurance Company. The Tribunal held that all these RWs are independent witnesses and not interested to depose against respondent No.3. RW-2 has no occasion to make false entry in the register for registration of vehicles. The Tribunal reached to the conclusion on the basis of the evidence of these witnesses that the mini bus was insured with respondent No.3/appellant and respondent No.3 cannot evade its liability to pay the compensation.

On the other hand, Insurance Company produced RW-3, who did not bring the insurance cover note of the policy. No reason or ground has been given by the Insurance Company as to why insurance policy has not been produced by the Insurance Company. If it has been issued in favour of RW-5 Sukhbir Singh, then RW-5 Sukhbir Singh should have produced it but has not produced the insurance cover note. The record was available with the Insurance Company, but there is no explanation as to why the cover note has not been produced by RW-3, the witness of the Insurance Company.

Keeping in view the evidence on record, I find that the findings of the Tribunal are correct and as per law. Nothing has been shown to me that there was any averment in the written statement that this insurance policy had been issued for scooter etc. in the name of RW-5 Sukhbir Singh.

Therefore, from the above discussion, I find that there is no merit in the present appeal and the same is dismissed.

April 6, 2015.

(Inderjit Singh)
Judge

hsp