IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH
-.-

F.A.O No. 1782 of 1997
Decided on : January 14, 2015

National Insurance Co. Ltd. ... Appellant

Versus

Isham Singh & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Sanjiv Pabbi, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

This is insurer's appeal against award dated 06.05.1997 passed by the learned Motor Accident Claims Tribunal, Karnal ('the Tribunal' – for short) in a claim case arising out of the death of Smt. Bala (deceased) that occurred on account of rash and negligent driving of a truck bearing registration No. HR-11-0654 by the respondent – Naresh Kumar on 29.12.1993. Isham Singh-applicant had brought the Claim Application No.52 of 05.04.1994, to seek compensation on account of death of his wife who was stated to be earning Rs.6000/- by doing tailoring work and running a milk dairy. Application was contested by the respondents by filing written statements wherein factum and manner of accident were denied and various preliminary/additional pleas were taken.

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

1. Whether the accident in question was the result of rash and negligent driving of truck No. HR-11-0654 by respondent No.1? If so, its effect?OPP
2. Whether Bala wife of Isham died of the injuries in the said accident, if so, its effect?OPP
3. To what amount of compensation the claim is entitled and from whom?OPP
4. Whether the claim petition is not maintainable?OPR.
5. Whether the claimant has no locus standi and cause of action to file the petition?OPR.
6. Whether the driver of the truck was not holding valid driving licence at the relevant time, if so, its effect?OPR.
7. Relief.

After evidence on both the sides was complete, learned Tribunal appraised the same in the light of the submissions made at the bar and after hearing the parties decided all the issues favourable to the applicant and ultimately vide award dated 06.05.1997 awarded a compensation amounting to Rs.2,11,000/- in favour of the applicant holding the respondents, including the insurance company, jointly and severally liable to pay the same.

As aforesaid, insurer is in the instant appeal against award dated 06.05.1997.

As nobody appears for respondents, I have heard learned counsel for the appellant – insurance company.

Learned counsel for the appellant argues that the learned Tribunal has committed an error of fact and law by making insurer liable to pay the amount of compensation along with other respondents by ignoring the fact that the driver of the offending vehicle namely – Naresh Kumar was not holding a legal and valid driving licence to drive heavy vehicle on the date of occurrence as is evident from the fact and endorsement authorising him to drive heavy vehicle was made only on 27.05.1994 whereas the accident took place much prior thereto, i.e. on 29.12.1993.

Nothing more has been urged.

The factum and manner of the occurrence, as also the quantum of compensation assessed by the learned Tribunal, are not in dispute. The only dispute is with regard to liability to pay the amount of compensation. Insurer has attempted to avoid liability on the plea that on the day on which the occurrence took place driver of the offending vehicle was not authorised to drive the vehicle in question as it happened to be a heavy vehicle and the first respondent possessed a driving licence only to drive a light vehicle. It is a fact that on the day of accident respondent No.1 possessed a driving licence of light vehicle only and endorsement authorising him to drive heavy vehicle was made only on 27.05.1994. As held by the learned Tribunal, the insurer, i.e., respondent No.3 before the Tribunal has not been able to prove that breach of the conditions of the insurance policy by respondent No.2, the owner of the offending vehicle, was intentional. In fact, as a matter of common knowledge while employing a driver the employer, at the most, is expected to enquire from the driver if he is in possession of a driving licence and it is not case of the insurer-appellant that it was not so enquired by the respondent No.2 or that the first respondent was engaged as a driver and was handed over the vehicle inspite of the fact that the second respondent was aware that the first respondent did not possess any effective and valid driving licence to drive a heavy vehicle at the time of his engagement or at the time of the occurrence. In view of all these circumstances, handing over the offending vehicle to the first respondent, can at the most, be said to be a bona fide omission of the second respondent. It is not sufficient to relieve the insurer of the liability arising out of the policy of insurance.

In view of the above, I regret my inability to scribe to the view put forth by the learned counsel for the appellant. In the consequence, the appeal fails and is dismissed.

No costs.

[Mahavir S. Chauhan]
Judge

January 14, 2015
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