IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1304 of 1999 (O&M)
Date of Decision: January 08, 2015

Narinder Pal & others

..Appellant(s)

Versus

Jit Kaur and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? No

Present: Mr. Inderjit Sharma, Advocate
for the appellants.

Mr. Sarvesh Kumar Gupta, Advocate
for respondent No.1.

Mr. Naveen Kapur, Advocate
for respondent No.3.

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ANITA CHAUDHRY, J.

1. This appeal is by the owner and driver seeking discharge of the liability placed upon them vide award dated 27.04.1999 by the Motor Accident Claims Tribunal, Rupnagar (here-in-after referred to as the Tribunal). The Tribunal had discharged the insurance company and had placed the liability of payment of compensation upon owner and driver.

2. Touching the facts with a view to give the background, an accident took place on 28.11.1996 in which Ajit Singh aged 42 had died. Ajit was a T-Mate with B.B.M.B. Ganguwal. He was stated to be earning Rs.4,000/- per month. Respondents no.1 & 2 i.e. the owner

and driver appeared before the Tribunal and filed their written statement but after the case was fixed for evidence, they failed to appear and were proceeded ex parte.

3. The insurance company took the routine pleas denying their liability and that a false story has been concocted to claim compensation.

4. The Tribunal returned a finding in favour of appellants on issue no.1 holding the driver negligent. The income of the deceased was taken @ Rs.4,000/- per month. His age was considered as 50 years and applying the multiplier of 11 and giving a deduction of 1/3rd, the calculations were made. The compensation was calculated at Rs.1,98,000/-. The claimant no.1 alone was held entitled to the compensation with interest @ 12%.

5. The onus of issue no.3 was placed upon the insurance company. A Local Commissioner was appointed by the Tribunal who visited the Office of Licensing Authority, Hyderabad to verify the authenticity of the driving licence. A report was submitted subsequently that there was no entry regarding the driving licence in the records of the Licensing Authority and therefore, the insurance company was discharged.

6. Aggrieved by the finding, the driver and owner filed the present appeal. During the course of the hearing, an application was filed by the appellants for production of additional evidence. The order that was passed on 20.01.2014 reads as under:

> *"The original papers have been burnt. There is a reference in the judgment of the non-examination of the driver and the non-production of an alleged renewal of driving licence. The*

counsel for the appellants argues that the renewed driving licence was produced before the Court but the Court refused to admit the same in evidence. The counsel refers me to grounds of appeal that adverts to the said challenge.

In the absence of relevant records from the Court below, I will afford the appellant counsel an opportunity to place the documents which he wants to place his reliance on to prove his alleged qualification for driving through a valid driving licence to be proved in accordance with law. The appellants are at liberty to file an appropriate application and tender such evidence as deemed necessary and the Insurance Company shall also have an opportunity to cross-examine the witness or adduce such evidence on the conclusion of evidence that may be brought by the appellants.

Adjourned to 18.03.2014.

Steps for production of additional evidence in the meanwhile."

7. The appellants were allowed to lead additional evidence and they examined Bhag Singh RW-2 who spoke about the renewal of the licence in the name of Narinder Pal. Kewal Krishan RW-3, owner of the truck deposed that he had purchased the truck in 1985 and he had employed Narinder Pal as a driver and before engaging him, he had checked his driving licence. On cross-examination by the insurance company, he stated that he had checked the licence which was renewed by the Licensing Authority, Una. The copy of the Driving Licence was shown to the witness but he was unable to admit or deny that the document was the same one which was shown to him by the driver. He explained that he could not admit the document on account of his weak eyesight.

8. No evidence was led in rebuttal to the evidence led by the appellants.

9. The submission made on behalf of the appellants was that though the owner and driver were ex parte before the Tribunal and no evidence could have been led but an opportunity for examining the owner was given and the owner had stepped into the witness box and had deposed that he had seen the driving licence when he had engaged the driver. It was urged that the insurance company had sent the licence for verification but they had failed to explain as to from where they had procured the driving licence and the driver and owner were ex parte before the Tribunal. It was urged that since the owner had deposed that he had verified that the driver had a licence and that was the only duty that was placed upon him and the insurance company cannot be exonerated and was liable to pay the compensation. It was urged that the owner is not expected to verify the genuineness of the driving licence. Reliance was placed upon ***Pepsu Road Transport Corporation Vs. National Insurance Company*** 2013(4) RCR (Civil) 273, ***National Insurance Company Ltd. Vs. Swaran Singh and others*** 2004(3) SCC 297 and ***Skindia Insurance Co. Ltd. Vs. Kokilaben Chandravadan*** 1987(2) SCC 254.

10. Per contra, the submission of the insurance company was that it was the driver who had produced the driving licence and perhaps this fact escaped the notice of the appellants and a wrong submission had been made. It was urged that the owner and driver had filed their written statement and had subsequently withdrawn from the proceedings and they were proceeded ex parte. It was urged that though the appeal had been filed by the driver also but he failed to step

into the witness box. It was urged that the owner was called to make a statement after 18 years just to fulfil the requirement of the law and the argument that were made on 20.01.2014 were limited to the licence which was renewed. It was urged that the driving licence was placed before the owner who is a Ex-Navy personnel but he failed to admit or deny that the driving licence was the same which he had seen at the time of appointment of driver. It was urged that Kewal Krishan gave a false statement. It was urged that if the owner was not sure that the driving licence shown to him in the Court was the same licence which had been produced at the time of engagement of the driver and the owner cannot be discharged. It was urged that it was a fake licence and therefore, the owner – driver chose to absent themselves from the proceedings and when ultimately the liability was placed upon them, they filed the appeal but the driver still stayed away.

11. This is the appeal seeking reversal of the order passed by the Tribunal as the driving licence which was produced by the driver before the Tribunal was found to be fake. The appellants after a gap of 13 years of filing the appeal examined the owner to satisfy the requirement set out in Swaran Singh's case (supra). The question is when the owner could not admit or deny or say with affirmation that the driving licence was the same which he had seen at the time of engaging the driver, then nothing remains which helps the appellants nor can they avoid their liability.

12. An argument had been raised on behalf of the appellants that the insurance company had obtained some licence and had sent it for verification little knowing that licence had been produced by the driver before the Tribunal which was sent for verification. There is a

clear finding recorded on issue no.3 that the driving licence No.217/H/1986-1987 had been sent for verification to Licensing Authority, Hyderabad. This is the same number which is mentioned in the grounds of appeal in para no.6. Therefore, there is no dispute that the driver was relying upon driving licence No.217/H/1986-1987. This licence was found to be fake and the report of the Local Commissioner had been adduced as evidence by the insurance company. The owner and driver failed to join the proceedings and allowed themselves to be proceeded ex parte. In the appeal, they moved an application for additional evidence 13 years after the appeal was filed. The driver at no stage stepped into the witness box. The owner was non-commital about the driving licence. In view of these circumstances, in my view the driver-owner cannot avoid their liability. There is no merit in the appeal. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 08, 2015
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