

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2151 of 1999
Date of decision: 08.04.2015

The New India Assurance Co.Ltd.Appellant

versus

Om Parkash and others Respondents

FAO No.2172 of 1999
Date of decision: 08.04.2015

The New India Assurance Co.Ltd.Appellant

versus

Raj Kumari and others Respondents

Present: Mr. Paul S. Saini, Advocate for the appellant.

S.S. SARON, J.

This order will dispose of FAO No.2151 of 1999 and FAO No.2172 of 1999 as they arise out of the same award dated 05.05.1999 passed by the learned Motor Accident Claims Tribunal, Patiala (Tribunal-for short). Both the appeals i.e. FAO No.2151 of 1999 and FAO No.2172 of 1999 have been filed by the New India Assurance Company Ltd. primarily against Jasvinder Pal Singh, the driver of truck No.PCT-9835 and Nachhattar Singh, owner of the truck No.PCT-9835.

Om Parkash, Satya Devi and Kanchan (respondents No.1 and 3 in FAO No.2151 of 1999) as also Raj Kumari, Kiran and

Vikas (widow, daughter and son respectively of deceased Mohan Lal) (respondents No.1 to 3 in FAO No.2172 of 1999) filed separate claim petitions claiming compensation for the motor vehicles accident that had occurred on 23.06.1996. The compensation was claimed against Jasvinder Pal Singh and Nachhattar Singh, who were the driver and owner respectively of the offending truck as also the New India Assurance Company Ltd. with which the truck in question was insured.

The learned Tribunal after considering the evidence and material on record allowed the claim petitions of the claimants Om Parkash, Satya Devi and Kanchan as also Raj Kumari, Kiran and Vikas and compensation was granted to them.

The grievance of the appellant-Insurance Company is that in fact it is not liable to pay the amount of compensation that has been awarded by the learned Tribunal as Jasvinder Pal Singh driver of the offending truck was not holding a valid driving licence. Issue No.5 in the case was framed to the effect as to whether driver of the truck No.PCT-9835 was not holding a driving licence at the time of alleged accident ? If so, its effect?

The learned Tribunal held that no evidence had been led by the respondents including the appellant-Insurance Company for proving that the driver was not holding a valid driving licence at the time of the accident. The driver Jasvinder Pal Singh had placed on file, a photocopy of the driving licence as Ex.R3. In the absence of any evidence produced on the file in support of the said issue, the issue was adjudicated against the respondents and

in favour of the claimants in the claim petition. The onus propandi on issue No.5 as referred to above, was upon the respondents.

Learned counsel for the appellant submits that an application was filed before the learned Tribunal for appointment of a Local Commissioner to verify the fact of the driving licence from the Licensing Authority at Hyderabad which was dismissed by the learned Tribunal on 22.02.1999. In this regard it is also stated in the grounds of appeal that the driving licence was issued to the driver of the offending truck initially by the Licensing Authority, Hyderabad vide licence No.26927/82 dated 13.08.1982. It was subsequently renewed by the District Transport Officer, Sangrur vide renewal No.2096 dated 29.09.1992, which was valid upto 17.09.1994. After that it was again renewed by the District Transport Officer, Sangrur vide renewal entry No.3010 dated 03.09.1995, which was valid upto 17.09.1997. The renewal of the driving licence on verification was found to be correct. However, the Additional Licensing Authority, Hyderabad in response to letter dated 19.03.1998 written by Shri P. Gopala Krishna Surveyor, Hyderabad who was appointed as Investigator by the appellant-Insurance Company informed that no such driving licence bearing No.26927/82 was ever issued by the Licensing Authority. The report of the Additional Licensing Authority, Hyderabad is mentioned in the grounds of appeal as follows:-

“Returned. As per this office record no

such Driving Licence No.26927/82 was issued to Sh. Jasvinder Pal Singh by this Office. Hence the same is returned herewith.

-sd-
Additional Licencing Authority
RTA, Hyd. Cen. Zone
20.03.98"

It is submitted that the appellant-Insurance Company on receipt of the said report produced the same before the learned Tribunal and made an application for appointment of a Local Commissioner to verify the correctness of the driving licence from the Licencing Authority, Hyderabad. However, the learned Tribunal wrongly rejected the said application of the appellant-Insurance Company vide order dated 22.02.1999. As such the appellant-Insurance company was denied an opportunity to prove the aforesaid issue.

The said order dated 22.02.1999 declining to appoint a Local Commissioner for inspection of the driving licence from Hyderabad has not been produced on record. The award after passing of the order dated 22.02.1999 was passed on 09.05.1999. During the interregnum period also it is not shown that the said order was assailed by way of a revision petition or otherwise. Even otherwise, a Court or Tribunal is not to normally appoint a Local Commissioner for collection of evidence on behalf of the party to a lis. It is for the party to lead whatever evidence it wants unless the nature of evidence is such that it ought to be taken on the spot. In fact witnesses are not to be examined by

the Local Commissioner unless the parties are agreeable or there are other valid necessary grounds for examining witnesses by a Commissioner. The validity of the order dated 22.02.1999 could have been considered had the order been placed on record. Section 105 of the Code of Civil Procedure reads as under:-

“105. Other orders- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.”

In terms of the above, an order affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. Therefore, in order to ascertain the correctness of the said order, the same was liable to be produced. The order was not available even on the trial Court record as the paper book of the case was burnt in the fire that had broken out in the High Court premises on 30.01.2011.

Therefore, in the peculiar facts and circumstances, it would be just and expedient that the appellant-Insurance

company in case it is able to establish that the driving licence of Jasvinder Pal Singh was invalid, it may recover the awarded amount from the owner or driver of the offending truck in accordance with the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Swaran Singh**, (2004) 3 SCC 297 wherein it has been held that the liability of the insurance company to satisfy the decree at the first instance and to recover the amount from the owner or driver thereof has been holding the field for a long time. The compensation it is stated has already been paid to the claimants.

In the circumstances, both the appeals are disposed of leaving it open to the appellant-insurance company to show that the driving licence held by Jasvinder Pal Singh driver of the offending truck was not valid and recover the amount due as compensation from the owner and driver of the truck in accordance with the law.

(S.S. SARON)
JUDGE

08.04.2015
A.Kaundal

Note: To be referred to reporter: Yes