IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2786 of 1999 (O&M)
Date of decision: 30.11.2015

United India Insurance Company Limited

….Appellant

Versus

Kamlesh Rani and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Vivek Sharma, Advocate
for Mr. Gurcharan Dass, Advocate
for respondents No.6 and 7.

RITU BAHRI J. (Oral)

CM No.14723-CII of 1999

For the grounds mentioned in the application, the same is allowed and the delay of 15 days in re-filing the appeal stands condoned.

MAIN CASE

The present appeal has been filed by the appellant-Insurance Company against the award dated 18.05.1999, passed by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby the claimants have been awarded a compensation of Rs.2,66,328/-, on account of the death of Subhash Kumar in a motor vehicular accident, which took place on 02.04.1997.

On 02.04.1997, at about 07:30 p.m., Subhash Kumar was going to his village Ganduan on G.T. Road, from Mandi, Gobindgarh. When he reached near Grain Market on G.T. Road, Khanna, a bus bearing registration No.PB-11-F-9591, came from his backside at a very high speed, which was being driven by respondent No.1 rashly and negligently and it struck with bicycle and as a result of that that strike, Subhash Kumar had suffered multiple grievous injuries and succumbed to his injuries at the spot.

In this regard, FIR in respect of the accident in question, was got registered at the instance of Chander Mohan.

Consequently, the claimants-respondents filed a claim petition before the Tribunal.

Before the Tribunal, Chander Mohan appeared as PW-2, to prove the accident in question. Ultimately on the basis of the evidence led by the parties, the Tribunal has came to the conclusion that the accident in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has returned the finding on Issue No.1 in favour of the claimants-respondents.

The claim petition was accepted by the Tribunal and a sum of Rs.2,66,328/- was awarded as compensation on account of death of Subhash Chander along with future interest at the rate of 12% per annum from the date of filing of the petition till its realization.

The Insurance company is aggrieved against the finding of the Tribunal on Issue No.2 that respondent No.1 was having a valid driving licence and also the insurance policy stood cancelled.

The Tribunal has accepted the driving licence produced by Harvinder Singh-respondent No.1, which was taken on record as Mark-A. The said driving licence was valid upto 01.02.1999. The onus to prove that this driving licence was fake is on the Insurance Company and after availing number of opportunities, no witness has been examined by the insurance company. The Insurance Company has taken the dasti summons to serve the witnesses, but in spite of that no witness had appeared and thus, in the absence of any evidence, the finding on Issue No.2, recorded by the Tribunal that the driving licence (Mark-A) was valid upto 01.02.1999, cannot be reversed.

In the present appeal, the application under Order 41 Rule 27 CPC has been filed by the Insurance Company for producing the letter regarding the cancellation of the policy of vehicle involved in the accident and other connected documents.

The letter (Annexure R-1) shows that the insurance premium with regard to the vehicle in question had not been cleared and was unpaid and further the respondent No.3 were directed to make the payment afresh through cash or bank draft for a sum of Rs.11,855/- and thereafter, the company will issue cover-note certificate from the date of receipt of the amount. This letter has been placed on record to show that on the date of accident the vehicle was not insured.

This letter cannot be taken into consideration at this stage as no issue with regard to validity of the driving licence has been framed before the Tribunal.

So, keeping in view the above facts and circumstances, no ground for interference is made out and thus, the appeal filed by the appellant i.e. United India Insurance Company Limited, is hereby dismissed.

(RITU BAHRI)
JUDGE

30.11.2015
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