IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.20 of 2001 (O&M)
Date of decision: 29.04.2015

United India Insurance Company Limited ....Appellant

Versus

Durga Devi and others ....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

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

Mr. P.S. Rana, Advocate
for respondents No.6 and 7.

K.C. PURI J. (Oral)

This appeal has been directed by United India Insurance Company Limited, against the award dated 02.11.2000,passed by Sh. R.C. Gupta, Motor Accident Claims Tribunal, Kaithal, vide which the claim petition was partly accepted and the claimants were allowed a sum of Rs.1,55,000/- on account of death of Sahab Singh in a motor vehicular accident.

The facts as gathered from the record are that on 22.03.1997, Sahab Singh (deceased) was going from Kaithal to village Balu on a motor-cycle bearing registration No.HYJ-6877. Lal Singh and Subhash were also with him. When they reached near bye-pass at Jind Road, Kaithal at about 05:00 PM, a tractor bearing registration No.HR-07-4064, came from the opposite direction. The tractor was being driven by Balbir Singh in a very rash and negligent manner and hit against the motor-cycle due to which all the occupants of motor-cycle fell down and sustained injuries. Sahab Singh succumbed to the injuries at the spot. The other injured were removed to Civil Hospital, Kaithal, where statement of Lal Singh was recorded by the police, which culminated into recording of FIR.

Respondents No.1 and 2 (driver and owner) filed joint written statement denying the factum of accident with tractor bearing registration No.HR-07-4064 and it is pleaded that tractor was not involved.

Respondents No.3-insurance company filed separate written statement pleading that the excessive and exaggerated amount has been claimed as compensation. It is further pleaded that tractor was being driven by its driver without a valid driving licence.

From the pleadings of the parties, following issues are framed:-

1. *Whether the accident was caused due to rash and negligent driving of Tractor No.HR-07-4064 on the part of Balbir Singh, respondent No.1 causing death of Sahab Singh? OPP.*
2. *If issue No.1, is proved then what amount of compensation are the claimants entitled to and from whom? OPP.*
3. *Whether the offending vehicle was being driven*

by its driver without a valid driving licence and in violation of terms and conditions of insurance policy, if so to what effect? OPR.

4. *Relief.*

The finding on Issues No.1 and 2 were returned in favour of the claimants by learned Tribunal and finding on Issue No.3, were returned against insurance company and consequently, the claim petition was partly accepted.

Feeling dis-satisfied with the award dated 02.11.2000, the United India Insurance Company Limited, Kurukshetra has directed this appeal.

The only point urged during the course of argument is in respect of Issue No.3 that driver was not holding a valid lience.

Learned counsel for the appellant has submitted that insurance company has examined RW-3, Rajinder Singh, Clerk, office of DTO, Amritsar, who has categorically stated that he has brought the summoned record and as per Entry No.3347 dated 07.03.1993, the driving lience was issued in the name of Vijay Kumar son of Brahm, Village and Post Office, Burajgil, District Amritsar. It is further submitted that respondents No.1 and 2, have claimed that Mark-A was the licence issued in the name of Balbir Singh. It is further submitted that the Entry mentioned at Mark-A is 3347, which was in the name of Vijay Kumar and not in the name of Balbir Singh. It is further submitted that in the finding of the Tribunal Mark-A was not put to RW-3 is of no consequences. The onus shift upon the respondent that Balbir Singh was holding a valid driving licence.

On the other hand, learned counsel for the respondents has supported the judgment passed by learned Tribunal and has submitted that mere allegation of forgery is not sufficient and has relied upon ***"Oriental Insurance Company Limited vs. Dalbir Singh"*** reported in **1998 (1) RCR (Civil) 575 (DB)** of this Court.

I have considered the submissions made by learned counsel for both the parties and have gone through the case file and record with their able assistance.

Since only Issue No.3, is in dispute and as such, the evidence produced by the parties require re-appreciation. The insurance company has relied upon the testimony of RW-3, Rajinder Singh, Clerk, who has stated that he has brought the summoned register containing Entry from 3102 to 3489 and Entry at Sr. No.3347 dated 07.03.1993 is in the name of Vijay Kumar son of Brahm, Village and Post Office, Burajgil, District Amritsar. No cross-examination has been conducted by respondents No.1 and 2. The other relevant evidence is the testimony of RW-2, Amit Singh son of Bhola Singh, the owner of the offending vehicle, who has stated that he is the owner of tractor No.HR-07-4064. In the cross-examination, this witness has stated that Balbir Singh was driver of his tractor. He was employed by him as a driver about 3-

4 months before the accident and further stated that he did not see the driving licence of Balbir Singh when he was employed by him.

The driver of the offending vehicle has not come into the witness-box to state about the driving lience. Mark-A is the photostat copy of the driving licence purported to have been issued in favour of Balbir Singh son of Brahm. The said licence is at Serial No.3347, and is issued in the name of Vijay Kumar and not in the name of Balbir Singh. No other licence has been produced by the contesting respondent. The insurance company has been able to prove the fact that licence Mark-A is a forged and fabricated licence as no licence was issued in the name of Balbir Singh.

So far as the authority Oriental Insurance Company Ltd. Case (supra) is concerned that authority is distinguishable as in that case register was not produced in the Court whereas register in the present case was produced before the Tribunal. The Division Bench under those circumstances held that where the register has not been produced in that case, it cannot be said that licence is forged. The amount of compensation has been stated to be paid to the claimants. The dispute is regarding recovery rights only. So, in view of the above discussion made above, finding of Issue No.3, stands reversed and stand determined in favour of the insurance company and against the contesting respondents.

So the appeal stands accepted and in view of the finding on Issue No.3, the insurance company is held entitled to claim the amount of compensation from respondents No.6 and 7, namely, Balbir Singh and Amit Singh along with interest @ 7.5% per annum from the date of payment to the claimant till realization.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

(K.C. PURI)
JUDGE

29.04.2015
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