IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3445 of 2001
Date of decision: 13.05.2015

National Insurance Company Limited ….Appellant

Versus

Anil Saini and others ….Respondents

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

Present: Mr. Aditya Kochar, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Sanjeev Sharma, Advocate
for respondent No.3.

K.C. PURI J. (Oral)

This is an appeal directed by insurance company against the award dated 23.07.2001 passed by Sh. Lakhbir Singh, Motor Accident Claims Tribunal, Chandigarh, vide which claim petition was partly accepted and a sum of Rs.97,938/- has been allowed to the claimants.

The case of the claimants set out in the claim petition is that on 25.09.1997 at about 09:30 p.m. he was going on scooter No.CH-01-P-7103 from Sector 41 to PGI, Chandigarh and was on the road dividing Sectors 24 and 25, Chandigarh. When he was about 100 yards behind Himachal Sarai Bhawan, Scooter

No.CHR-1512, driven by Sh. Kartar Nath was going ahead of his scooter. In the meantime, a maruti car bearing No.CH-01-A-1200 driven by Jasjit Singh rashly and negligently came from the opposite direction. It was struck against the right side of Scooter No.CHR-1512 after crossing the middle of the road and bringing it on the wrong side. As a result of the impact, Kartar Nath fell on the road alongwith his scooter. Thereafter, Jasjit Singh lost his control over the car and hit the car with the scooter of the claimant and caused multiple injuries including fractures to him. The scooter was badly damaged. There was fracture of shaft of femur (right), Patella and other multiple injuries.

Respondents No.1 and 2 filed written statement denying the involvement of the car bearing No.CH-01-A-1200. Respondent No.3 filed the separate written statement pleading that respondent No.1 was not holding a valid driving licence. The factum of insurance was admitted. It is pleaded that Dr. Mewa Singh Sonar is the owner of the car.

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

1. Whether claimant received injuries in a motor vehicle accident, which took place on 25.09.1997 on the road dividing Sector 24-25 due to rash and negligent driving of car No.CH-01-A-1200 by respondent No.1? OPP.

2. Whether the claimant is entitled to compensation. If so, how much and from whom? OPP.

3. Whether respondent No.1 was not holding a valid driving licence at the time of accident. If so, its effect? OPR.

4. Relief.

The learned Tribunal after adjudication returned the finding of Issues No.1 and 2 in favour of the claimants and Issue No.2 was decided against the insurance company and appellant. Consequently, the claim petition was partly accepted and a sum of Rs.97,938/- was allowed.

Feeling dis-satisfied with the award the insurance company has directed this present appeal.

The only point urged during the course of arguments is in respect of finding on Issue No.3 that respondent No.1 was not holding a valid driving licence. Learned counsel for the appellant has submitted that the insurance company is not liable as the licence produced by respondent No.1 was valid from 13.05.1998 to 17.05.2018 whereas the accident has taken place on 25.05.1997 i.e. much prior to the issuance of driving licence Ex.R-1. It is further pleaded that the driver while appearing in the witness box has stated that he was possessing another driving licence issued by the Licensing Authority, Amritsar, but that licence has not been produced. So, it can be safely presumed that respondent No.1 was not holding a valid driving licence and as such, the insurance company is not liable as the terms and conditions of the policy has been violated.

I have considered the said submissions and have gone through the record but do not find any force in that submission. It is a settled law that onus to prove that driver was not holding a valid driving licence lies upon the insurance company. From the perusal of Issue No.3, it is further cleared that onus has been placed upon the insurance company. Mere arguing that since earlier licence has not been produced and as such it be presumed that respondent No.1 was not holding a valid driving licence cannot be accepted. The insurance company has not taken any step to file application before the Tribunal for directing Jasjit Singh-driver to produce the another licence. No official of the Licensing Authority, Amritsar, has been called to prove that assertion made by Jasjit Singh-respondent No.1. So, finding on Issue No.3 does not call for any interference.

The appeal is without any merits and the same stands dismissed.

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

(K.C. PURI)
JUDGE

13.05.2015
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