IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1183-2004 (O&M)
Date of Decision: 05.08.2015

National Insurance Company Ltd.

......Appellant

Versus

Kulwant Singh & Ors.

......Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Naveen Kapur, Advocate
for the appellant.

***

K.C. PURI, J (Oral)

This is an appeal directed by the Insurance company against the award dated 10.11.2003 passed by the Motor Accident Claims Tribunal, Ambala vide which the claim petition was partly accepted and claimants were allowed a sum of ₹2,20,400/- as compensation along with interest @ 9% per annum.

Briefly stated, the claimants, son and widow of the deceased, filed claim petition under Section 166 of the Motor Vehicle Act, 1988 for grant of compensation to the tune of Rs. ten lac on account of death of Dalip Singh in a motor vehicular accident on 13.09.1995. The vehicle in question was driven by Moolakh Raj and Chandan Pahwa was its owner and the National Insurance Company was the insured.

The claim petition was resisted by all the respondents, including, the Insurance Company. The appellant-Insurance Company, filed written statement with the preliminary objection that the claim petition is not maintainable. That the same has been filed in collusion with respondents No.1 & 2. It is further pleaded that respondent No.1 was not holding valid driving licence at the time of accident. The claim petition is time barred.

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

> *"1. Whether the accident in question had taken place due to rash and negligent driving of Canter No. HR-37-1616 by respondent No.1? OPP*
>
> *2. Whether the claimants are entitled to compensation if so, to what amount and from whom?OPP*
>
> *3. Whether the offending vehicle was being driven by respondent No.1 without holding a valid and effective driving licence at the time of alleged accident?OPR*
>
> *4. Relief."*

Issues No. 1 & 2 were decided in favour of the claimants and issue No. 3 was decided against the Insurance Company.

Insurance Company has directed this appeal challenging the finding returned on issue No.3 regarding driving licence. However, at the time of admission of appeal, appeal qua respondent No.3 & 4 i.e. driver and owner was admitted and was dismissed qua the claimants. Thereafter the case was fixed for summoning of respondents No. 3 & 4. Vide order dated 22.09.2010, this Court ordered that respondent No.4 be summoned on furnishing correct address failing which the appeal would be deemed to have been dismissed qua respondent No.4. There is an order on the file that appeal qua respondent No.4 stands dismissed in view of the order dated 22.09.2010. The Insurance Company has not taken any step till today to revoke the said order. Otherwise, on merit also the Insurance Company could not make out a case for interference. The onus to prove the fact that driver was not holding a valid driving licence is always upon the Insurance Company. No evidence has been produced in this regard by the Insurance Company.

The only argument advanced by the counsel for the appellant is that the driver has not produced the driving licence and he has further submitted that Criminal Ahlmad has categorically stated that there is no driving licence on the criminal file corresponding to respondent No.1 and as such adverse inference be drawn against respondent No.1. However, that contention is meritless. Respondent No.1 driver was proceeded against ex parte lateron. So, in these circumstances, no ground for interference by this Court is made out.

Appeal stands dismissed.

(K.C. PURI)
JUDGE

05.08.2015
sp