214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1032 of 2012
Date of Decision:12.02.2015

ICICI LOMBARD GENERAL MOTOR INSURANCE CO. LTD
.... Appellant

VERSUS

JOGINDER SINGH AND OTHERS
.... Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. R. S. Dhull, Advocate
for the appellant.

Mr. Arvinder Arora, Advocate
for respondents No.2 and 3.

MAHAVIR S. CHAUHAN J. (ORAL)

Award dated 26.11.2010 passed by learned Motor Accident Claims Tribunal, Ambala ("the Tribunal" for short) has awarded compensation amounting to Rs.50,000/- in favour of Joginder Singh, the respondent, his brother Sheo Ram having died while he was in the process of getting down from the offending bus. Respondent-Joginder Singh's case is that Sheo Ram died in a motor vehicle accident on 11.10.2009 on account of rash and negligent driving of a bus bearing registration No. HR-37B-1705 ("offending vehicle" for short) by its driver Kuldeep Singh. Learned Tribunal has fastened liability upon the insurer to pay the amount of compensation which is under challenge in this appeal brought by the insurer.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the appellant that driver of the offending vehicle did not possess a valid driving licence at the time of accident and that being so, condition of the policy of insurance that the vehicle would not be handed over for being plied on the road to an un-authorised person has been violated and, therefore, no liability can be fastened upon the appellant-insurer. The contention, however, is resisted by learned counsel appearing for respondents No.2 and 3-owner and driver, the only contesting respondents by submitting that it has come on record that respondent No.2-owner of the offending vehicle before allowing respondent No.3 to drive the bus satisfied him about driving skill of said respondent and that being so, no condition of the policy of insurance can be said to have been violated by him which could entitle the insurer to avoid its liability.

Nothing more has been urged.

Factum and manner of occurrence as also the quantum of compensation awarded by the learned Tribunal are not in dispute. Still it may be stated that case of the appellant before the learned Tribunal was that his brother Sheo Ram had died in a motor vehicle accident caused on account of rash and negligent driving of the offending bus by respondent Kuldeep Singh on 11.10.2009 and that a sum of Rs.60,000/- was spent on the treatment and last rites of the deceased who was only bread winner of the family was earning Rs.3,300/- per month and was aged about 60 years.

Respondent No.1, 2, 3 and 10 contested the application by filing their written statements denying all the allegations of the application.

From the pleadings of the parties, learned Tribunal framed following issues:

1. Whether Sheo Ram died in a motor vehicle accident on 11.10.2009 which took place due to rash and negligent driving of Bus No. HR-37-B-1705 by Respondent No.1? OPP

2. If issue No.1 is proved, to what amount of compensation, claimant is entitled from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR-3
4. Relief.

Both the sides adduced evidence and were heard by the learned Tribunal and the matter was disposed of as hereinbefore stated.

On issue No.3, learned tribunal has returned a very specific finding that respondent No.2-owner of the offending vehicle by examining Mohan Singh, Secretary of the Society has brought on record that before handing over the offending vehicle, they had checked the driving licence of respondent No.3 and he was also asked to drive a vehicle to the satisfaction of the owner. At that time they could not suspect the validity of the driving licence shown by Kuldeep Singh to them.

In this view of the situation, the owner of the offending vehicle cannot be said to have deliberately and intentionally violated any terms of the policy of insurance and in view of the settled position of law in such a situation the insurer cannot be allowed to escape its liability arising out of use of the vehicle insured with it.

Nothing to the contrary is shown during the course of hearing.

In view of the reasons stated hereinabove, I do not find any reason to interfere with the findings recorded by the learned Tribunal and in the consequence, appeal fails and is dismissed. However, the parties are left to bear their own costs.

(MAHAVIR S. CHAUHAN)
JUDGE

12.02.2015
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