IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5105 of 2011 (O&M)
Date of Decision: 10.04.2015

National Insurance Company ltd.

......Appellant

Versus

Jaswinder Kaur and others

......Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. Gopal Mittal, Advocate,
for appellant.

Mr. G.K.Turka, Advocate,
for respondents.

Mr. Sukhdarshan Singh, Advocate,
for respondent No.3.

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SHEKHER DHAWAN, J

The present appeal is challenge to the award dated 03.06.2011 by Motor Accident Claims Tribunal, Patiala (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' has awarded compensation of ₹9,81,000/-. However, 'The Tribunal' had directed the appellant-insurance company to pay the amount of compensation to the claimant within two months and to recover the said amount from respondents No.1 and 2 as they failed to produce any route permit or fitness certificate of offending vehicle.

2. Relevant facts for the purpose of decision of the present appeal that the claimant Jaswinder Kaur and others filed claim petition seeking compensation on account of death of Subhash Kumar. As per claimant, on

27.08.2009 Subhash Kumar (since deceased) was going on motorcycle bearing No.PB-11-AF-0398 and his brother Rajinder Singh was following him on motorcycle bearing No.PB-11AM-9235. At about 7.30.pm a jeep Mahindra and Mahindra bearing registration No.PB-11AM-9235 came from Rajpura side on Patiala-Rajpura road. The said jeep was being driven by respondent No.1 in a rash and negligent manner and struck against the motorcycle of Subhash Kumar. Resultantly Subhash Kumar fell down and sustained injuries on his head. He was taken to Rajindra Hospital, Patiala and then to PGI Chandigarh and because of the injuries sustained in accident, died on 23.11.2009.

3. Respondents contested the claim petition. Appellant-insurance company had taken a plea that driver of vehicle No.PB-11-AM-9235 and motorcycle No.PB-11-AF-0398 were not having valid and effective driving licence at the time of accident. The driver of vehicle No.PB-11-AM-9235 was not having valid route permit, fitness certificate and registration certificate. Appellant-insurance company admitted that vehicle No.PB-11-AM-9235 was insured with them particularly at the same time and denied their liability to pay the amount of compensation as it was a case of breach of terms and conditions of the insurance policy.

4. 'The Tribunal' after recording the evidence came to the conclusion that driver of offending vehicle was having valid driving licence of light motor vehicle and respondent No.3 being the insurer of the vehicle is liable to pay the amount of compensation. However, the recovery rights were given to the insurance company as respondent Nos.1 and 2 failed to produce any route permit or fitness certificate of the offending vehicle.

5. Appellant-insurance company has filed the present appeal.

Mainly taking the plea that insurance company is not liable to pay any amount of compensation as Jaj Singh respondent No.1 who was driving the offending vehicle i.e. Mahindra and Mahindra tempo bearing registration No.PB-11AM-9235 was not having any licence on the date of accident. No liability could be fastened upon the insurance company and the findings recorded by 'The Tribunal' giving recovery rights to the insurance company are liable to be set aside. Rather the insurance company is entitled to be exonerated and they are not liable to pay any amount in this course.

6. Ms. Jaspal Kaur, learned counsel for the respondents took the plea that 'The Tribunal' has rightly recorded the findings. More so the payment of awarded amount of compensation has already been received by the claimant and the recovery rights have already been granted to the insurance company, hence the appeal be dismissed.

7. Having considered the rival contentions of learned counsel for the parties and taking the case from undisputed facts, that the accident in this case had taken place on 27.08.2009. Jaj Singh son of Mulkha Singh was driving the offending vehicle i.e. Mahindra and Mahindra tempo bearing registration No.PB-11AM-9235. 'The Tribunal' has already recorded the findings on the basis of evidence available on file that there was no route permit or fitness certificate with the driver and owner and as such the driver and owner are liable to make the payment of compensation. However, as vehicle was insured with respondent No.3 Insurance Company was directed to satisfy the claim of third party and thereafter to recover the said amount from the driver and owner.

8. The main challenge to the award by appellant-insurance company is that Jaj Singh was not having any driving licence on the date of accident.

Respondents have produced only one driving licence i.e. Ex.RW-1/A on the file. The said driving licence is in the name of Jaj Singh son of Mulkha Singh and i.e. for driving light motor vehicle only. The said driving licence was issued on 22.09.2009 and was valid till 21.09.2012. The report Ex.RW-1/B is on the same point. Except that there is no other driving licence produced by driver and owner in this case. Meaning thereby Jaj Singh was not having any driving licence on the date of accident i.e. 27.08.2009 rather the driving licence, copy of which is Ex.RW-1/A on the file was got issued after 27 days. There was complete violation of insurance policy as the driver of offending vehicle was not having any driving licence on the date of accident. 'The Tribunal' fell in error while recording observation on this point which are otherwise contrary to the facts and evidence available on file that as on 27.08.2009 Jaj Singh-respondent No.1 was not having any driving licence at all.

9. Similar controversy had gone before Hon'ble Supreme Court in case titled as **United India Insurance Co. Ltd. Vs. Gian Chand and Ors. 1998(1) PLR 712** that if vehicle was being driven by an unlicenced person the insurance company is to be totally exonerated from making the payment of awarded amount. Identical view was taken by Coordinate Bench this Court in case titled as **The Krishna Bus Service (P) Ltd. Vs. New India Insurance Co. & Ors. 1993(2) PLR 92 P&H** that insurance company is not required to make any payment if the driver was not holding any valid driving licence.

10. As per law laid down by Hon'ble Supreme Court and view taken by this Court in **The Krishna Bus Service (P) Ltd. Vs. New India Insurance Co. & Ors** (supra), insurance company was not liable to make

payment of any awarded amount and the present appeal is accepted, thereby, modifying the award that the liability to pay the amount of compensation, as awarded by 'The Tribunal' shall be of respondents No.1 and 2 only and if the insurance company has already made the payment to the claimant, appellant-insurance company shall be entitled to recover the same amount from respondents No.1 and 2 i.e. driver and owner of offending vehicle.

11. In view of the above, appeal is partly accepted.

(SHEKHER DHAWAN)
JUDGE

April 10, 2015
msd