IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5544 of 2011 (O&M)
Date of decision: 29.7.2015

The New India Assurance Company Ltd.

…. Appellant

Versus

Smt. Anita Sharma & anr.

…. Respondents

Present: Mr. Neeraj Khanna, Advocate for appellant–Insurance Company.

Mr. Rohit Ahuja, Advocate for respondents No.1 to 3.

Mr. R.K. Sharma, Advocate for respondents/cross-objectors No.4 and 5.

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S.S. Saron, J.

This appeal has been filed by the appellant New India Assurance Company Limited against the judgment and award dated 27.4.2011 passed by the learned Motor Accident Claims Tribunal, Faridabad ('Tribunal' – for short) whereby the claim petition filed by the claimants/respondents No.1 to 3 has been partly accepted and compensation of Rs.4,47,000/- has been awarded, which is payable by the respondents before the learned Tribunal i.e. the appellant herein, Chander Pal (respondent No.5), registered owner of the offending vehicle No. HR-55C 1817 and Ram Dayal (respondent No.4), who was the driver of the said offending vehicle. The amount was ordered to be paid jointly and severely by the respondents before the learned Tribunal i.e. the appellant, respondent No.5 and respondent No.4 herein.

The grievance of the appellant New India Assurance Company Limited is that the learned Tribunal erred in coming to the conclusion that the Insurance Company was also held to be jointly and severely along with respondents No.5 and 4 liable to pay the amount of compensation. It is submitted that in fact the driver (Ram Dayal – respondent No.4) of the offending vehicle was not holding a valid and effective driving license. The driving license of Ram Dayal (respondent No.4) had expired on 17.1.2008 which was renewed on 30.1.2009. The accident had occurred on 8.12.2008 and on the said date, Ram Dayal (respondent No.4) did not have a valid driving license. Therefore, according to the appellant on the date of the accident, the driver of the offending vehicle was not holding a valid and effective driving license. As such, the Insurance Company cannot be held to be liable for payment of the amount of compensation and it stands absolved of its liability.

The driver and owner (respondents No.4 and 5) of the offending vehicle have filed cross-objections No.28-CII of 2013. Along with the cross-objections, CM No.7593-CII of 2013 has been filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure ('CPC' – for short) for permission to lead additional evidence. According to the cross-objections, Ram Dayal (respondent No.4) driver of the offending vehicle, in fact had a valid driving license which was valid at the time of accident. The driving license was valid from 30.1.2008 to 29.12.2011 and the accident had occurred on 8.12.2008. It is submitted that Ram Dayal (respondent No.4) sought information under the Right to Information Act from the Transport Department, Government of Haryana and he addressed an application to the District Transport

Officer, Gurgaon for issuing him a verification of his driving license No.111G/2002. The Licensing Authority-cum-Regional Transport Authority, Gurgaon, made an endorsement on the said application itself mentioning that the driving license in question was valid from 30.1.2008 to 29.12.2011. The copy of the application (Annexure C/2) and copy of the driving license (Annexure C/3) have been placed on record. It is submitted that the aforesaid application as well as endorsement was provided by Ram Dayal (respondent No.4) to his counsel before the learned Tribunal and got an application typed on 27.4.2011 and duly attested his affidavit in support of the same for leading additional evidence so as to produce the said document on record. The application, however, could not be filed before the learned Tribunal due to inadvertence or negligence resulting in passing of the impugned award against the cross-objectors. The copy of the application dated 27.4.2011 (Annexure C/4) and affidavit dated 27.4.2011 (Annexure C/5) are also placed on record.

In order to ascertain the factual position with regard to the license that had been issued by the Licensing Authority at Gurgaon, this Court vide order dated 20.5.2015 ordered that the Licensing Clerk, office of Regional Transport Authority, Gurgaon along with the record pertaining to driving license No.111G/2002 in the name of Ram Dayal (respondent No.4) son of Suraj Bhan be summoned. The Licensing Clerk was asked to bring specific information as to the date on which the said driving license was issued as also the date on which it was renewed and the record on the basis of which information (Annexure C/2) under the Right to Information Act was given on 25.4.2011. Respondents No.4 and 5 were asked to deposit the diet money and travelling expenses for summoning the Licensing Clerk of the office of Regional Transport Authority, Gurgaon within ten days of the passing of the order dated 20.5.2015 in this regard and the case was adjourned for today.

According to the office report, notice could not be issued to the Licensing Clerk, office of the Regional Transport Authority, Gurgaon as the learned counsel for respondents No.4 and 5 did not deposit the diet money and travelling expenses.

After giving my thoughtful consideration to the matter, it is to be noticed that the Supreme Court in National Insurance Company v. Swaran Singh (2004) 3 SCC 297 has held that the liability of Insurance Company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. Therefore, the Insurance Company i.e. the appellant herein is liable to pay the claimants (respondents No.1 to 3) the due amount of compensation in accordance with the award in the first instance and recover the amount due from the driver and owner (respondents No.4 and 5), in case the driving license of Ram Dayal (respondent No.4) is found to be false or improper. This recovery, it was held in the said case, is to be made in accordance with the provisions of Section 149 of the Motor Vehicles Act, 1988 ('Act' – for short).

In the facts and circumstances it is to be noticed that the process of recovery by the appellant - Insurance Company is to be initiated in the nature of execution before the learned Tribunal at Faridabad. Therefore, it would be just and expedient in the facts and circumstances of the present case that the appellant –

Insurance Company pays the due amount to the claimants (respondents No.1 to 3) and thereafter, recovers the amount from the driver and owner (respondents No.4 and 5) of the offending vehicle. However, the driver and owner (respondents No.4 and 5) shall be given opportunity by the learned Tribunal at Faridabad in proceedings to be initiated by the appellant - Insurance Company in terms of Section 149 of the Act to show that the driving license held by Ram Dayal (respondent No.4) on the date of the accident was valid. This would be more convenient as the said enquiry can be conducted by the learned Tribunal itself on the basis of the material sought to be produced by the cross-objectors/driver and owner (respondents No.4 and 5). It is stated by learned counsel for the appellant – Insurance Company that in fact the amount awarded by the learned Tribunal has already been deposited by it and the stay that was granted by this Court on 24.8.2011 staying the disbursement of the amount till further order was vacated by this Court on the last date of hearing i.e. 20.5.2015.

Accordingly, the appeal is disposed of and the appellant – Insurance Company shall pay the due amount to the claimants (respondents No.1 to 3) and thereafter, seek refund from the owner and driver (respondents No.4 and 5) of the offending vehicle in terms of Section 149 of the Act on the premise that the driving license held by Ram Dayal (respondent No.4) was invalid. However, in case such an application is filed for recovery of the amount from the owner and driver (respondents No.4 and 5), it would be open to them to show that the driving license held by Ram Dayal (respondent No.4) was valid on the basis of the documents referred to above and other material available with them. The dispute inter se between the appellant – Insurance Company, and the driver and owner (respondents No.4 and 5) would not affect the rights of the claimants (respondents No.1 to 3) to recover the amount due and payable to them from the appellant-Insurance Company.

(S.S. Saron)
Judge

29.7.2015
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Note: Whether to be referred to the Reporter: Yes/No