IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5787 of 2011 (O&M)
Date of decision: 25.05.2015

Niladri Pal ….Appellant

Versus

Bajaj Allianz General Insurance
Company Ltd. and others ….Respondents

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

Present: Mr. J.P. Ahlawat, Advocate
for Mr. N.D. Achint, Advocate
for the appellant.

Mr. Nitin Mittal, Advocate
for Mr. Subhash Goyal, Advocate
for respondent No.1.

Mr. Rohit Rana, Advocate
for Mr. Kunal Dawar, Advocate
for respondent No.2.

K.C. PURI J. (Oral)

This is an appeal directed by owner-cum-driver against the award dated 10.08.2010 passed by Sh. R.S. Virk, Motor Accident Claims Tribunal, Gurgaon.

Briefly stated, the claimant filed claim petition claiming compensation to the tune of Rs.25,00,000/- on account of death of Daya Nand in a motor vehicular accident.

Respondent No.2-Bajaj Allianz General Insurance

Company Limited, filed written statement admitting the factum of insurance, but has taken the stand that respondent No.1 now appellant before this Court, was not holding a valid driving licence.

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

> *1. Whether the accident in question was caused by respondent No.1 while driving Innova bearing registration No.DL-7CG-1249 in a rash and negligent manner resulting into death of Daya Nand, as alleged? OPP.*
> *2. If issue No.1 is prove, whether the claimants are entitled to any compensation and if so to what extent and from whom? OPP.*
> *3. Whether the respondent No.2 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR.*
> *4. Relief.*

The learned Tribunal after appraising the evidence on the file, returned the finding on Issues No.1 and 2 in favaour of the claimant and it was held that claimants are entitled to claim Rs.4,18,610/- along with interest @ 7.5% per annum, however regarding Issue No.3, it was held that respondent No.1, i.e. now appellant, was not holding a valid driving licence and consequently recovery rights were given to the insurance company.

Feeling dis-satisfied with the award dated 10.08.2010, the owner-cum-driver has directed this appeal.

The only point involved in the present appeal is whether Niladri Pal was holding a valid driving licence or not. This Court vide order dated 28.01.2014 directed the Tribunal to allow the additional evidence regarding licence and gave finding regarding Issue No.3. The learned Tribunal vide report dated 08.08.2014 gave a finding that Niladri Pal was holding a valid driving licence which was duly renewed at the time of accident. The insurance company has not filed any cross-objections in respect of that finding.

As per the report of the learned Tribunal, the appellant was holding a valid driving licence. So, the finding of Tribunal that recovery rights are given to the insurance company does not sustain the test of the legal scrutiny. Consequently, the appeal is accepted and the finding on Issue No.3 of the Tribunal that insurance company has right to recover the amount stands set-aside and it is held that respondents No.1 and 2, i.e. the appellant and the insurance company held jointly and severally liable to pay the amount of compensation.

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

(K.C. PURI)
JUDGE

25.05.2015
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