IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5722 of 2012

Date of decision: 19th January, 2015

M/s Gobind Bus Service Regd. and others

… Appellants

Versus

National Insurance Co. Ltd. and others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Anutej S. Barnala, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.1.

Respondents No.2 and 3 – ex parte.

FATEH DEEP SINGH, J.

The appellants are the owners of the offending bus bearing registration No.PB-13K-0781 which on the fateful day of 14.11.2003 being driven in a rash and negligent manner by Jagga Singh driver caused injuries to Manpreet Kaur, a young girl aged around 19 years a student of 7th Class while she was going back to her house in village Handaya from her school namely Baba Alia Singh Public School, Barnala on bicycle and was hit by the bus in question leading to injuries which led to her hospitalization in Dayanand Medical College and Hospital, Ludhiana from 14.11.2003 to 02.12.2003 leaving her permanently disabled.

After hearing Mr. Anutej Singh Barnala, Advocate for the appellants and Mr. Ravinder Arora, Advocate for the insurer/respondent No.1.

It is not in any manner questioned that the FIR pertaining to this accident was registered against the driver of the bus. The arguments that are sought to be raised on behalf of the appellants that the FIR Ex.P1 itself showed the rash and negligent driving by the driver of the offending bus and which is corroborated by the own testimony of the claimant as PW2 as well as PW1 Tejpreet Singh an eye witness.

The learned counsel for the appellants could not controvert the submissions of the learned counsel for the respondent/insurer that even the criminal Court by virtue of judgment Ex.P2 has held the driver of the bus responsible for rash and negligent driving besides the fact that driver and owner are contesting the claim petition but never bothered to step into the witness box to state their side of the story and thus it has been rightly argued on behalf of the respondent/insurer that an adverse presumption under Section 114 of the Evidence Act needs to be drawn against them. Learned counsel for the appellants could not pinpoint anything adverse that has come in the evidence of the claimant and even findings of the learned Tribunal on issue No.1 needs to be upheld.

Learned counsel for the appellants has squarely conceded as far as the quantum of compensation is concerned and has not stressed or argued on that point.

The next line of arguments revolves around the very validity of the driving license. The insurer M/s National Insurance Company Ltd. which is respondent No.6 in the claim petition was supposed to prove issue No.3 onus of which lay upon them. Though it is contended on behalf of the insurer that reports Ex.R6 and Ex.R7 of the Licensing Authority reveal that the driving license Ex.R1 was never issued by them in favour of the driver, as has been argued mere exhibiting of a report suo-motu by the driver did not establish this fact legally as the record has never been produced nor opportunity of cross-examination has been afforded, and which fact cannot be controverted on behalf of the present respondent.

Suffice to hold, it is well settled law that mere exhibiting of a document does not dispenses with its proof and thus, ought to be proved legally and legitimately which the insurer has failed to do. It would suffice to hold that remanding the matter at this stage would be prejudicial to the interests of the claimant as well as other parties as it might involve a huge amount accumulating on account of interest and it would be sufficient to hold that the question of validity of the driving license needs to be kept open to be decided in the execution/appropriate proceedings before the Executing Court where the parties would be at liberty to lead evidence qua this fact. However, being an insured vehicle the Insurer will pay the amount as well as driver and owner jointly and severally. The recovery rights of Insurer shall be subject to the finding on the Driving License.

In view of the foregoing discussions, the instant appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

January 19, 2015
rps