IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.189 of 2013 (O & M)
Date of Decision: *December 17, 2015*

Sumer Singh

…… APPELLANT

VERSUS

Royal Sundaram Alliance Insurance Company Limited & others

….. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. Arun Yadav, Advocate, for the appellant.

Mr. D.K. Prajapati, Advocate, for Mr. R.S. Madan, Advocate, for respondent No.1.

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Jaspal Singh, J

1. The instant appeal has been preferred by appellant – Sumer Singh seeking modification of award dated August 28, 2012 passed by the Motor Accident Claims Tribunal, Rewari (for short, Tribunal') to the effect that no recovery rights can be given to respondent – Royal Sundaram Alliance Insurance Company Limited (for short, 'Insurance Company'). Vide the impugned award, claimants have been awarded an amount of ₹ 4,17,500/- holding that Insurance Company shall first pay the amount of

compensation and thereafter it shall be at liberty to recover the amount, so paid to claimants, from the insured i.e. appellant herein.

2. Legal heirs of Bhoop Singh filed a claim petition seeking compensation on account of his death caused in accident that occurred on May 4, 2006 involving tractor bearing registration No.RJ32-RA-0495 when he was going from Neemrana to Bilaspur. A truck came from back side, being driven in rash and negligent manner, struck against the aforesaid tractor – trolley, as a result of which, Bhoop Singh succumbed to injuries at the spot. FIR No.106 dated May 4, 2006 was also registered under Sections 279, 304-A IPC at Police Station, Dharuhera on the statement of Babu Lal Sharma. Claimants, in their claim petition, submitted that Bhoop Singh was a driver and an agriculturist by profession.

3. The petition was contested by appellant – respondent No.1 (owner of offending truck) by filing written statement wherein he admitted the factum of accident and death of Bhoop Singh at the spot. He submitted that the tractor was being used for agricultural purposes and a small quantity of bricks were being carried in the trolley. Bhoop Singh was engaged as a driver. The tractor was duly insured with respondent No.1 – Insurance Company.

4. Respondent – Insurance Company also contested the claim petition by filing written statement taking preliminary

objections with regard to maintainability of petition in the present form, cause of action, mis-joinder and non-joinder of necessary parties etc. It was submitted that the petition is not maintainable under Section 163-A of the Motor Vehicles Act, 1988 as the said provision is applicable only in respect of "third party" and the driver was not a "third party". It was pleaded that deceased himself was rash and negligent. It was submitted that insured had entrusted the tractor to a person who was not holding a valid & effective driving license and the vehicle was being driven in violation of the terms & conditions of insurance policy.

5. From the pleadings of parties, issues were framed by the Tribunal and parties led their respective evidence in support of their pleas. After hearing learned counsel for the parties and perusing the record available on file, Tribunal awarded the compensation to the claimants vide Award dated August 28, 2012 holding respondents (in claim petition) liable to pay compensation. However, respondent – Insurance Company was directed to first satisfy the award and thereafter, recover the amount so paid to claimants, from appellant by filing an execution petition.

6. While assailing the impugned award, learned counsel for the appellant has contended that the Tribunal did not appreciate the evidence in proper perspective and erred while giving recovery rights to the Insurance Company. The evidence produced by

appellant (owner) proved the factum of having a valid and effective driving license by Bhoop Singh (deceased) at the time of accident. The Tribunal has also not appreciated the fact that driving license of Bhoop Singh was misplaced/lost at the time of accident which was specifically stated by wife of Bhoop Singh while appearing in witness box as PW-3 and no question was raised by the Insurance Company regarding the aforesaid fact which proves that Insurance Company had admitted the factum of loss of driving license. The Tribunal also not appreciated the fact that Bhoop Singh was employed by the appellant after proper verification of his driving license. Moreover, the onus to prove holding of valid and effective driving license on the date of accident was on the Insurance Company.

7. Per contra, learned counsel for respondent – Insurance Company has argued that the award passed by the Tribunal is absolutely in consonance with the legal proposition and evidence available on record. The Tribunal has rightly provided the recovery rights to the Insurance Company while holding that Bhoop Singh was not having a valid and effective driving license.

8. This Court has given an anxious thought to the submissions made by learned counsel for the parties and perused the record.

9. Admittedly, the factum of accident is not in dispute. The amount of compensation awarded by the Tribunal has also not been disputed. The only question that has been raised by the appellant is that Tribunal has wrongly given the recovery rights to the Insurance Company ignoring the fact that Bhoop Singh had a valid and defective driving license at the time of accident.

10. No doubt, wife of Bhoop Singh, while appearing in witness box as PW-3 stated that driving license of Bhoop Singh (deceased) was misplaced/lost at the time of accident but she remained silent on the matter when she was given a legal notice to produce the driving license of deceased. Moreover, a legal notice was also given to appellant (owner of offending tractor) to produce the driving license of Bhoop Singh. Even, he could not produce any such document to prove that he had verified the driving license of Bhoop Singh before employing him as driver. The Tribunal, while placing reliance on a judgment of Hon'ble Apex Court in case Sardari vs. Sushil Kumar, *2008(2) Law Herald (P & H) 032 (SC)*, wherein it has been held that owner of vehicle has a statutory obligation to see that driver of the vehicle whom he authorised to drive the same, holds a valid license. Therefore, it was for the owner to ensure that the person whom he had employed as driver on the tractor, possess a valid and effective driving license. The Tribunal has rightly held that Bhoop Singh (deceased) did not

possess a valid and effective driving license on the date of accident and whereas it is apparent that tractor was handed over to a person who did not possess a valid driving license, the owner committed violation of the terms & conditions of the insurance policy and therefore, Insurance Company is not liable to indemnify the insured. This Court is of the considered view that there is no error or infirmity in the award passed by the Tribunal while holding that Insurance Company shall first satisfy the award and then it will be entitled to recover the same from the insured.

11. In the light of what has been discussed above, there is no merit in the instant appeal and the same is dismissed whereby the findings rendered by the Tribunal in Award dated August 28, 2012 are hereby affirmed.

(Jaspal Singh)
Judge

December 17, 2015
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