IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2112 of 2013 (O&M)
Date of decision : September 09, 2015

National Insurance Company Ltd. .....Appellant

Versus

Tara Devi and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Ms. Amandeep Kaur, Advocate for
Mr. Ashwani Arora, Advocate
for respondents No. 1 to 5.

None for respondent No. 6.

Mr. Lalit Garg, Advocate
for respondent No. 8.

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LISA GILL, J

Present appeal has been filed by National Insurance Company impugning the award dated 03.01.2013 passed by the learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal').

While not addressing any arguments qua quantum of compensation awarded to the claimants, it is argued that appellant -

insurance company should have been exonerated from its liability and in the alternate atleast recovery rights should have been afforded to the appellant.

Brief facts of the case are that Shakti Chand alias Shakti Singh deceased was travelling with Som Nath as a pillion rider on motor cycle bearing registration No. HP-20-C-1408. Som Nath was driving on the correct side of the road at normal speed while observing traffic rules. When they were going towards Nangal another motorcycle bearing registration No. HP-20-D-3587 driven by Kashmiri Lal in rash and negligent manner and at a high speed came at about 7.45 p.m. from their rear. He did not blow horn and struck into the motorcycle on which deceased Shakti Chand alias Shakti Singh was travelling. Shakti Singh sustained injuries and fell unconscious. He was taken to BBMB Hospital, Nangal by Santosh Singh, thereafter, referred to PGI Chandigarh where he ultimately succumbed to his injuries.

At the same time Kashmiri Lal driver of the offending motorcycle also sustained injuries and succumbed to them later. Claim petition under Section 166 of Motor Vehicles Act was filed by the claimants who were the wife, minor children and father of the deceased Shakti Chand claiming compensation on account of his death which occurred due to the rash and negligent driving of the motorcycle bearing registration No. HP-20-D-3587.

Claim was resisted by the respondents. Owner of the offending motorcycle averred that the accident infact took place due to rash and negligent driving of Som Nath. Appellant - respondent, insurer of the offending motorcycle denied liability of the insurance company inter alia claiming negligence on the part of the driver of the other motorcycle.

Following issues were framed by the Tribunal:-

1. Whether Shakti Chand alias Shakti Singh died in a motor vehicular accident which took place on 24.10.2011 at about 7.45 PM near Darouli Mandir with Motor Cycle No. HP-20-D-3587 being driven by Kashmiri Lal and Motor Cycle No. HP-20-C-1408 being driven by respondent No. 3? OPP
2. Whether drivers driving the vehicles in question were not having valid and effective driving licence at the time of alleged accident? If so, its effect ? OPR
3. Whether vehicles in question was being driven without valid RC and fitness certificate at the time of alleged accident? If so, its effect? OPR
4. If issue No. 1 is proved, whether claimants are entitled to get compensation? If so, to what amount and from whom? OPP
5. Relief.

Learned Tribunal on appreciation of the evidence on record concluded that Shakti Singh @ Shakti Chand died in the motor vehicle accident, which took place on 24.10.2011 solely due to rash and negligent driving of the offending motorcycle by Kashmiri Lal. In respect to issue No. 2 i.e. whether the drivers were having a valid and effective licence, it was concluded that driving licence Ex. R2 of Som Nath was proved on record. Licence of Kashmiri Lal, who also died in this accident, was not produced on record and it was for the insurance company to have collected evidence in this regard or to have deputed the investigators to make inquiries. In the absence of such evidence it could not be held that Kashmiri Lal deceased did not possess a valid licence. It was found that both the motorcycles were duly registered, having proper fitness certificate at the time of accident. A total compensation of ₹5,55,000/- was awarded to the claimants.

Learned counsel for the appellant - insurance company vehemently argues that apart from the fact that the accident took place due to negligence of Som Nath, learned Tribunal has erred in not exonerating the insurance company from its liability specifically for the reason that driving licence of Kashmiri Lal, who also passed away in this accident, has not seen the light of the day.

While referring to the testimony of Parveen Kumar, Special Power of Attorney of respondent – Ravinder Kumar, owner of the offending vehicle HP-20-D-3587, learned counsel for the appellant submits that it was incumbent upon the owner to have produced the valid driving licence. Once it is not so produced there is a clear breach of terms and conditions of the insurance policy. In any case, it is submitted that the insurance company is entitled to recover the said amount from the owner.

I have heard learned counsel for the parties and gone through the record.

I do not find any infirmity, illegality or perversity with the finding returned by the learned Tribunal as alleged by learned counsel for the appellant. It has been held by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Swaran Singh and others*** 2004 (3) SCC 297 that mere absence or fake or invalid licence at the relevant time are not defences available to the insurer against the insured or third parties. To avoid its liability towards the insured also, the insurer company has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of the conditions of the policy. Burden to establish breach of policy is upon the insurer by leading cogent evidence on record. Mere non-production of licence or evidence by the insured cannot be considered as discharge of burden of insurer.

In the present case, it is the specific stand of the owner that Kashmiri Lal was having a valid driving licence at the time of accident. Owner tried to search for the same but it was not traceable. It was probably lost at the time of the accident. There is no evidence on record to indicate that the insurance company has made any kind of inquiries in regard to the driving licence of Kashmiri Lal from his heirs. In such a situation, it has been rightly held by the Tribunal that in the absence of any such evidence, it cannot be concluded that Kashmiri Lal deceased was not possessing a valid driving licence.

Similarly, there is no evidence on record to point out any breach or negligence on the part of the owner in not verifying the possession of the driving licence with the deceased. Argument that owner was unable to divulge the place from where the driving licence had been issued can definitely not be taken as a circumstance to infer non-discharge of responsibility casts upon the owner. It has been held by the Hon'ble Supreme Court in ***Pepsu Roadways Transport Corporation versus National Insurance*** (2013) 4 SCC 217 that the owner is not expected to go to the extent of verifying genuineness of the driving licence from the licensing authority. In the present case there is no evidence to show any shortcoming on the part of the owner. In such a situation, no fault can be found with the impugned award dated 03.01.2013. There is no infirmity, illegality or perversity which would warrant interference in this appeal filed by the insurance company.

Consequently, this appeal is dismissed.

(Lisa Gill)
Judge

September 09, 2015
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