IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4326 of 2013 (O&M)
Date of Decision: July 15, 2015

United India Insurance Company Ltd.

...Appellant

Versus

Kulwinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.K.Dogra, Advocate
for the appellant-Insurance Company.

Mr.Vijay Lath, Advocate
for respondents No.1 to 4.

Mr.Tejnder Pal Singh, Advocate
for respondent No.5.

****

INDERJIT SINGH, J.

Appellant-United India Insurance Company Ltd. has filed this appeal against respondents-claimants Kulwinder Kaur, Santosh Singh, Sukhjit Singh, Sandeep Kaur and respondents Hardeep Singh, driver and co-owner and Talwinder Singh, co-onwer of Minu Bus bearing registration No.PB-04J-9682 (offending vehicle), challenging the impugned Award dated 07.05.2013 passed by learned Motor Accident Claims Tribunal, SBS Nagar (hereinafter referred to as 'Tribunal').

The brief facts of the case are that claimants-respondents Kulwinder Kaur, Santosh Singh, Sukhjit Singh and Sandeep Kaur filed claim petition against respondents Hardeep Singh, driver and co-owner, Talwinder Singh, co-owner and United India Insurance Company Ltd., Insurer of the offending vehicle under Section 166 of the Motor Vehicles Act on account of death of Sharanjit Singh. As per the case of the claimants, on 14.07.2011 at about 4.00 P.M., Sharanjit Singh while riding on his motorcycle bearing registration No.PB-32F-7065, after paying obeisance at Gurudwara Raja Sahib was coming back to his house. When he reached on Khatkar Kalan-Manuwal road, the offending vehicle being driven by respondent-driver Hardeep Singh rashly and negligently in zig-zag manner came from the opposite side and struck against the motorcycle of Sharanjit Singh, as a result of which, he sustained multiple injuries and died on 15.07.2011. It is alleged that accident took place purely due to rash and negligent driving of the offending vehicle. FIR was also got registered. It is stated that deceased was an agriculturist by profession and was also doing dairy farming and earning ₹40,000/- per month.

After framing the issues and after the parties led evidence, learned Tribunal awarded compensation of ₹2,95,400/- along with interest @ 6% per annum from the date of claim petition till realization and respondents were jointly and severally held responsible to pay the compensation amount.

Aggrieved from the above-said Award, appellant-Insurance Company has filed the present appeal.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

At the time of arguments, learned counsel for the appellant has not argued anything regarding quantum. He has argued that the driver of the offending vehicle was not having valid and effective driving licence, therefore the Insurance Company is not liable to pay the compensation. He further argued that at the most, the recovery rights should have been given to the Insurance Company.

On the other hand, learned counsel for the respondents driver and owner argued that driver was having valid and effective driving licence and Insurance Company cannot escape liability.

After hearing learned counsel for the parties and after going through the record, I find that issue No.3 as framed by the Tribunal is as under:-

> *"3. Whether respondent No.1 was not holding a valid and effective driving licence on the date of accident?OPR-3"*

As per the driving licence of Hardeep Singh, he was entitled to drive motorcycle/LMV only and as per the report Ex.R4, it is a valid licence and there is valid route permit according to Ex.R5. Admittedly, respondent-driver was driving school bus which is a commercial vehicle and he was not entitled to drive the commercial vehicle as he was not having valid and legal licence. Bus is a transport vehicle.

Learned counsel for the appellant-Insurance Company cited judgment passed by the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. vs. Angad Kol and others, 2009(2) RCR***

(Civil) 419, in which, driver possessed licence to ply light motor vehicle and it is held that licence granted for transport vehicle is different from that granted for passenger motor vehicle. It is further held that specific authorization is required to drive a transport vehicle. It is held that driver had no valid and effective driving licence for driving goods vehicle and the Insurance Company is not liable. However, company was directed to pay amount of compensation and recover the same from driver and owner. Learned counsel for the appellant further cited judgment passed by the Hon'ble Supreme Court in ***National Insurance Company Ltd. vs. Kusum Rai and others, 2006(2) RCR (Civil) 313***, in which also the driver had driving licence for light motor vehicle but owner allowed the driver to drive commercial vehicle and driver caused death of child by negligent driving. It is held that Insurance Company is not liable, however, Insurance Company was directed to pay compensation awarded by the Tribunal and to recover the same from the owner.

I have gone through the above-cited judgments and the same fully apply in the present case.

No judgment has been cited in rebuttal to the above-cited judgments. In view of the law cited by learned counsel for the appellant-Insurance Company, the driver was not possessing a valid and effective driving licence to drive commercial vehicle. So, the findings given by the Tribunal on issue No.3 are set aside and it is held that driver of offending vehicle was not holding a valid and effective driving licence at the time of accident. As per the judgments cited above, the Insurance Company is to pay the compensation to the claimants but it has the right to recover the same from the driver and owner.

Therefore, finding merit in the present appeal, the same is allowed accordingly.

July 15, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**