In the High Court of Punjab and Haryana at Chandigarh

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(1) F.A.O. No.893 of 2013 (O&M)

.....

Date of decision:1.7.2015

National Insurance Company Limited through its Manager

.....Appellant

v.

Dalwinder Singh and others

.....Respondents

....

(2) F.A.O. No.3134 of 2013 (O&M)

.....

Mohan Lal and another

.....Appellants

v.

National Insurance Company Limited and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gopal Mittal, Advocate for the appellant in FAO No.893 of 2013 and for respondent No.1 in FAO No.3134 of 2013.

Mr. N.S. Kandola, Advocate for respondent/claimant-Dalwinder Singh in both the appeals.

Mr. Vijay Lath, Advocate for respondents No.2 and 3 in FAO No.893 of 2013 and for the appellants in FAO No.3134 of 2013.

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Inderjit Singh, J.

This order will dispose of the above mentioned two FAOs, as the same have arisen out of the same accident and same award and the dispute is also the same. One appeal has been filed by the owner and the driver of the offending vehicle and another has been filed by the Insurance Company challenging the award dated 30.11.2012 passed by Motor Accident Claims Tribunal, S.A.S. Nagar (Mohali) (hereinafter referred to as `the Tribunal'), vide which the award for compensation of ₹8,20,400/- along with interest @8% per annum from the date of claim petition till actual payment and cost of ₹1,000/-, has been passed.

The brief facts of the case are that on 6.3.2010 at about 7.30 p.m., after completion of their work, claimant-Dalwinder Singh along with one Darshan Singh alias Darsha, was coming back from Government School Village Rangian on Bajaj Chetak scooter bearing registration No.PB-23-A-9625, which was driven by Darshan Singh and the claimant was the pillion rider. When they reached on the link road of Village Rangian, then a car, which was being driven by respondent No.1-Mangat Ram at a very high speed and in a rash and negligent manner, came from the side of Morinda Octroi Post and struck against their scooter, as a result of which, both of them fell down on the road and received multiple injuries. Firstly, the claimant was taken to Civil Hospital, Phase-6, Mohali, from where, he was referred to PGI, Chandigarh, where he remained admitted as indoor patient till 9.4.2010. The accident had taken place due to rash and negligent driving of the above said offending vehicle driven by Mangat Ram-driver.

In FAO No.3134 of 2013 filed by Mohan Lal and Mangat Ram, owner and driver of the offending vehicle, learned counsel for the appellants argued that there is a valid renewal of the driving licence after the accident, therefore, the Insurance Company is liable to pay the compensation amount and the recovery right given by the Tribunal to the Insurance Company is not as per law and these findings should be set aside.

On the other hand, learned counsel for the National Insurance Company Limited in FAO No.893 of 2013 argued that the driving licence of the driver was renewed after about seven years of its expiry and at the time of accident, he was not having a valid and effective driving licence, therefore, the Insurance Company is not liable to pay the compensation. He placed reliance on the judgment of Hon'ble Supreme Court in National Insurance Co. Ltd. v. Vidhyadhar Mahariwala and others, 2008 (4) R.C.R. (Civil) 485. No other point has been argued in both these appeals.

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

The only dispute in both the appeals is whether the driving licence of the driver is to be treated as valid driving licence or not and whether the renewal after 2½ months of the accident can be treated that the driver was having effective and valid driving licence at the time of accident.

It is admitted case of both the parties that at the time of accident, there was no renewal of the driving licence as also argued by the counsel for the Insurance Company and not rebutted by the counsel for the driver and the owner that the driving licence was renewed after seven years of its expiry though it was renewed after 2½ months of the accident which means that when the accident took place the driving licence of the driver was already expired more than six years ago. The Hon'ble Supreme Court in the similar facts held in the above cited judgment that the Insurance Company is not liable where the driver possessed the driving licence, the validity of which had expired six moths prior to the accident. The Hon'ble Supreme Court also held that the award given by the Tribunal on the ground that after the validity of the driving licence had expired, but it could not be said that the driver was incompetent or disqualified to drive the truck, the ground is not tenable. The Hon'ble Supreme Court in this judgment has discussed the law in detail and reached to the conclusion and agreed with the decision as held in Ishwar Chandra v. Oriental Insurance Co. Ltd., 2007 (2) R.C.R. (Civil) 370. In para 11 of the judgment in National Insurance Co. Ltd. v. Vidhyadhar Mahariwala and others (supra), the Supreme Court held as under:-

> "11. In Ishwar Chandra's case (supra) the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2."

The judgment cited by the learned counsel for the Insurance Company is fully applicable to the facts of the case and in view of the law laid down in this case by the Hon'ble Supreme Court, the Insurance Company is not liable to pay the compensation to the claimant. The claimant is at liberty to claim the compensation from the owner and the driver.

The appeal filed by the Insurance Company i.e. FAO No.893 of 2013 is allowed accordingly and the appeal filed by the owner and the driver i.e. FAO No.3134 of 2013 is dismissed.

July 1, 2015. **(Inderjit Singh)**
Judge

hsp