

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.M. No. 25686-CII of 2014 in/and
FAO No. 9243 of 2014 (O&M)

Date of decision : 20.08.2015

United India Insurance Company Ltd.

.....Appellant

Versus

Savita Devi and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

LISA GILL, J.

Instant appeal has been preferred by United India Insurance Company impugning the award dated 22.10.2013 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal') whereby compensation to the tune of ₹11,22,100/- has been awarded to the claimants on account of death of deceased Asha Shankar. Claimants are the widow, minor children and mother of the deceased.

While not seriously disputing the quantum of compensation learned counsel for the appellant challenges finding of the learned Tribunal on issue No. 3 i.e. whether respondent – Jagdish Singh i.e. driver of the offending vehicle was holding a valid

and effective driving licence at the time of accident.

Briefly stated facts are that deceased Asha Shankar, his brother-in-law Raju son of Chhote Lal was coming from the scrap shop on 14.05.2012 at about 8.00 p.m. near Radha Swami Satsang, Pataudi Road, Gurgaon. At about 9.00 p.m. offending vehicle i.e. the crane bearing registration No. AP-21-AF-4960 driven by respondent – Jagdish in a rash, negligent and zig-zag manner and at a fast speed directly hit Asha Shankar. Asha Shankar sustained serious injuries as well as head injury, resultantly died on the spot. Respondent – driver fled from the spot while abandoning the crane a little ahead of the place of occurrence. FIR No. 164 dated 15.05.2012 was registered against him. Claim petition under Section 166 of the Motor Vehicle Act, 1988 was filed by the claimants claiming compensation of ₹20 lakhs on account of death of Asha Shankar.

Learned Tribunal framed the following issues:-

1. Whether the accident has been caused on 14.04.2012 at about 8.00 p.m. due to rash and negligent driving of respondent No. 1 while driving offending vehicle bearing No. AP-21-AF-4960 and caused death of Asha Shankar son of Babu Lal, as alleged? OPP
2. If issue No. 1 is proved, then what amount of compensation the petitioners are entitled to and from whom? OPP
3. Whether the respondent No. 1 was holding a valid and effective driving license at the time of accident? OPR
4. Whether the respondents have violated the terms and conditions of Insurance Policy? OPR

5. Whether the insurer is liable to indemnify the insured?

OPR

6. Whether the petition is not maintainable in the present form? OPR

7. Whether the petitioner have no locus standi and cause of action to file the present petition? OPR

8. Relief.

Issue No. 1 was decided in favour of the claimants by holding that Asha Shankar had lost his life due to an accident caused by rash and negligent driving of the respondent – driver. Compensation of ₹11,22,100/- was awarded, the details of which are under:-

“1. The petitioners shall be entitled to compensation of Rs. 9,72,096/- (Rs. 4,500+ 50% of 4,500/- = 6,750/- less $\frac{1}{4}$ towards personal expenses = (6750-1687=5063) 5063x12x16 = Rs.9,72,096/-).

2. Transportation and funeral expenses - Rs. 25,000/-

3. Loss of consortium - Rs. 1,00,000/-

4. Loss of care and guidance for minor children - Rs. 25,000/-

Thus, the total amount comes to Rs. 11,22,096/- (Say Rs. 11,22,100/-).”

Issues No. 4 to 7 were decided against the insurance company. Issue No. 3 in regard to the driving licence held by the driver was also decided against the insurance company while observing as under:-

“After hearing the rival contentions of learned counsel for the parties, I am convinced with the arguments advanced by the learned counsel for respondents NO. 1 & 2. In para No.6 of the preliminary objections of the

written statement filed by respondent No. 3, it is contended that the crane No. AP-21-AF-4960 was a heavy commercial vehicle. Ex. R-3 is the driving licence of respondent No.1 and from the perusal of same, it reveals that respondent No.1 was authorised to drive LMV/HTV. Meaning thereby respondent No.1 was authorised heavy motor vehicle. The arguments of learned counsel for respondent No.3 is beyond the pleadings. Therefore, I am of the considered opinion that respondent No.1 was having a valid driving licence to drive the offending vehicle. With these observations, this issue is decided against respondent No.3.”

Learned counsel for the appellant argues that as per report dated 27.12.2013 of the Surveyor of the company, driving licence No. 645/RDL has not been issued from the office of District Transport Officer, Gurdaspur. It is relevant to note that this report has never seen the light of the day before the Tribunal. It is in the present appeal that an application Order 41 Rule 27 CPC has been filed to place on record the said report which reads as under:-

“To

Dt: 27.12.13

United India Insurance Company Limited,
Branch office
Gurdaspur.

Kind Attn: Sr.Branch Manager

Subject: Verification of Driving Licence No. 645/RDL
Account of Jagdish Singh s/o Kashmer Singh for MACT
Case File No. 4262 for Divisional Office No. 14, Gurgaon.

Dear Sir,

As per instruction of your office to verify the DL No. 645/RDL account of Jagdish Singh s/o Kashmer Singh from DTO Office Gurdaspur.

I visited the DTO Office, Gurdaspur. For verification of Licence and met with dealing clerk Mr. Gurnam Singh and handed over letter to them. After Verification of record, he gave me remark's of verification letter that,

"That Driving Licence No. 6456/RDL dated 16/04/2011 valid up to 15/4/2014 for LMV/HTV only Not issued on the name of Jagdish Singh s/o Kashmer Singh, as per record of DTO Gurdaspur."

Issued without prejudice.

Thanking you

Sd/-

Rajesh Kumar Soni"

On a pointed query, learned counsel for the appellant was unable to produce the alleged remark of the dealing Clerk Mr. Gurnam Singh upon the verification letter.

It is also to be noted that there is no detail forthcoming in the application as to when Surveyor was deputed to verify the licence and neither is learned counsel for the appellant able to furnish the said details. No reason is forthcoming as to why such an exercise was not carried out at the very outset and the document submitted before the Tribunal at the relevant time.

Keeping in view the facts and circumstances of the case,

no ground is made out for allowing the application for additional

evidence for taking the report dated 27.12.2013 on record.

Learned counsel for the appellant has fairly stated that apart from the said surveyor report dated 27.12.2013, there is no evidence on record to challenge and impugn the validity of the driving licence.

Furthermore, it has been held by a Division Bench of this Court in **Surjan Ram versus Anchal Singh (Died)** 1997(3) RCR (Civil) 670 that mere production of a Surveyor report or even examining him is not sufficient to prove the driving licence to be invalid in the absence of any other evidence.

Another aspect to be noted is that admittedly such a plea has never been taken before the Tribunal. It was only urged that the driver did not have a valid licence to drive a heavy commercial vehicle i.e. the crane. Ex. R3, the driving licence revealed that the respondent driver was authorised to drive a LMV/HTV which was duly noted by the Tribunal.

Still further there is nothing to suggest that the owner had not satisfied himself about the competency of the driver and in regard to him holding a licence to drive a crane. It has been held by the Hon'ble Supreme Court in **Pepsu Road Transport Corporation versus National Insurance Company** 2013 (4) RCR (Civil) 273 that an owner is not expected to go to the extent of verifying the genuineness of the license from the licensing authority.

In view of the facts and circumstances as above, learned counsel for the appellant is unable to point out any infirmity, illegality or perversity in the impugned award which would warrant

interference by this Court.

Consequently, this appeal is dismissed.

August 20, 2015
rts

(Lisa Gill)
Judge