IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-115-1997
Date of decision : 26.07.2016

National Insurance Co.Ltd

... Appellant

Versus

Kashmir Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Service upon respondent No.1 already dispensed with, vide order dated 21.08.2014.

Respondents No.2 and 3 already proceeded against *ex parte* vide order dated 27.07.2015.

AMOL RATTAN SINGH, J.(ORAL)

This is an appeal filed by insurance company against the impugned Award of the learned Motor Accident Claims Tribunal, Jalandhar. Vide the said Award, the learned Tribunal had awarded the claimant (respondent No.1 herein) a compensation of Rs.60,000/- alongwith interest @ 12% per annum thereupon, on account of the death of her husband, Harbhajan Singh, in an accident which took place with a bus owned by respondent No.3 herein and driven by respondent No.2, on 17.09.1992.

The said Harbhajan Singh was stated to be a retired police Inspector, aged about 65 years, drawing a pension of Rs.1733/- per month.

However, the issue of his assessed income, his age etc. are not being gone into, in view of the fact that the learned counsel for the appellant company has limited the claim in this appeal only to recovery of compensation from respondents No.2 and 3, on account of the fact that respondent No.2 was not holding a valid driving licence on the date of the accident.

It is to be noticed that no appeal filed by either the claimant-respondent No.1, nor by respondents No.2 and 3 herein, against the impugned Award, has been brought to the notice of this Court by counsel for the appellant.

It is also to be noticed that service upon respondent No.1 was dispensed with vide order dated 21.04.2014, as neither the quantum of compensation, nor the negligence in causing the accident, are in issue. Respondents No.2 and 3, i.e. the driver and owner respectively, of the "offending vehicle", were also proceeded against *ex parte,* vide an order of this Court dated 27.07.2015, on account of their non-appearance despite service of the notice issued in this appeal, upon them.

2. Mr. Gopal Mittal, learned counsel for the appellant, points to paragraphs 10 & 11 of the Award of the learned Tribunal, to submit that the only reason that the Tribunal held that the driving licence possessed by respondent No.2 was valid, was because it had been renewed. However, even the Local Commissioner appointed by the Tribunal had reiterated that as per the Regional Transport Authority, Hyderabad, from where the licence held by respondent No.2 was stated to have been issued, had stated that no such licence was issued in favour of Udey Singh, i.e. respondent No.2 herein.

Hence he has relied upon a judgment of the hon'ble Supreme Court in ***New India Assurance Co. Vs. Kamla (2001) 4 SCC 342,*** to submit that renewal of a licence, originally fraudulently prepared (forged), would not validate the original licence.

3. Having considered the aforesaid argument and having gone through the relevant part of the Award of the Tribunal, pertaining to the issue in question, it is seen that the Tribunal noticed that a Local Commissioner had been appointed to record the statement of an official of the Regional Transport Authority, Hyderabad, who recorded the statement of S.F.Hussain, Superintendent of the RTA, Hyderabad, who stated that no such licence had been issued in favour of respondent No.2 by the said authority.

That evidence was never refuted by the respondents No.2 and 3 even though respondent No.2 herein (the driver of the bus and respondent No.1 before the Tribunal), testified as RW1. In his cross-examination, he stated that he got his licence renewed from the District Transport Officer, Ludhiana, which was valid from 03.06.1991 to 02.06.1994, i.e. it was valid on the date of the accident, which took place on 17.09.1992.

4. On the basis of the above, the Tribunal held that the insured, i.e. the owner of the vehicle, present respondent No.3, had no way of knowing as to whether the licence handed over to him by the driver (respondent No.2) was a fake or genuine licence and further, that licences are got prepared through agents or intermediaries and the licence holder, after completing formalities, is simply handed over the licence by such agents etc.

Hence, it was held that there was no violation of the conditions of the insurance policy and consequently, following the judgment of a Division Bench of this Court in **National Insurance Company v. Sucha Singh and others** (1994) 1 PLR 140, it was held that a validly renewed licence would be deemed to be valid and as such, it was finally held that the appellant insurance company was liable to pay compensation to the claimant.

5. Having seen the ratio of the judgment of the Supreme Court in *Kamlas'* case (supra), it is seen that the same has been followed almost constantly thereafter by their Lordships, right upto the judgment in **Siyyapan v. United India Insurance Company Ltd.** (2013) 7 SCC 62, wherein the duty of the insurer to pay the amount of compensation to the claimants was reiterated, with the right of such insurer to proceed against the insured for recovery of the amount, also reiterated.

In this regard, another judgment of the Supreme Court in **Premkumari v. Prahlad Dev** (2008) 3 SCC 193 can also be referred to, wherein while referring to an earlier judgment in **United India Insurance Company Ltd. v. Lahru** (2003) 3 SCC 338, the said judgment was cited from. In that case, the Supreme Court had referred to the difficulty of an owner to verify the validity of a licence of a driver whom he engages, when the licence could have been issued from anywhere in the country. While observing so, it was held that in such a situation the insurance company cannot be absolved of its liability to pay the compensation, but nevertheless it may still be able to recover such compensation from the insured.

6. Consequently, with the law as laid down in *Kamlas'* case (supra), to the effect that renewal of a driving licence that was originally fake or forged, does not strip such licence of its status of being a forged one, it is to be held that the appellant insurance company, having paid the compensation to respondent No.1, is entitled to recover the same from respondents No.2 and 3 herein.

This appeal is therefore allowed, to the extent that the appellant would be entitled to recover the compensation awarded to respondent No.1 herein, vide the impugned Award, from respondents No.2 & 3.

This is, however, without prejudice to the rights of respondent No.3 to recover the amount of compensation to be paid by him to the appellant insurance company, from respondent No.2, i.e. the driver of the vehicle, if in any such proceedings filed by respondent No.3, it can be shown that he exercised as much diligence as he could, to know that the driving licence possessed by respondent No.2 herein was a valid driving licence, on the date that he was engaged by respondent no.3 as a driver.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

July 26, 2016.
Davinder Kumar/dinesh

Whether speaking / reasoned Yes/No

Whether reportable Yes/No