IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1493 of 1997 (O&M)
Date of decision : February 19, 2016

Naresh Kumar .....Appellant

Versus

Karam Singh and others ....Respondents

FAO No. 1494 of 1997 (O&M)

Naresh Kumar .....Appellant

Versus

Karam Singh and others ....Respondents

FAO No. 562 of 1997 (O&M)

United India Insurance Company Limited .....Appellant

Versus

Siri Chand and others ....Respondents

FAO No. 563 of 1997 (O&M)

United India Insurance Company Limited .....Appellant

Versus

Naresh Kumar and others ....Respondents

FAO No. 564 of 1997 (O&M)

United India Insurance Company Limited .....Appellant

Versus

Naresh Kumar and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rohtash Birtt, Advocate for
Mr. S.S. Dinarpur, Advocate
for the appellant.(in FAO Nos. 1493 and 1494 of 1997)
for respondent No. 1.(in FAO Nos. 563 and 564 of 1997

Mr. Hardip Singh, Advocate
for respondent No. 1.
(in FAO Nos. 1493 and 1494 of 1997)
for respondent No. 2.
(in FAO Nos. 562, 563 & 564 of 1997)

Mr. Neeraj Khanna, Advocate
for the appellant.
(in FAO Nos. 562, 563 & 564 of 1997)
for respondent No. 3
(in FAO Nos. 1493 and 1494 of 1997)

***

LISA GILL, J.

This judgment shall dispose of all the abovesaid five appeals as they arise out of common award dated 02.11.1996 passed by learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal') .

Brief facts of the case are that on 19.06.1995, claimants – Naresh Kumar and Siri Chand were travelling in a jeep bearing registration No. HRJ-95. Naresh Kumar was driving the said jeep. When they were near village Khanpur Kollian at about 9.30 p.m., a tanker bearing registration No. PBW-2185 driven by respondent - Karam Singh approached from the opposite direction in a rash and negligent manner on the wrong side and collided with the jeep. Both Naresh and Siri Chand received injuries and the jeep in question was damaged. Though the number of the FIR was not mentioned, it is not denied that the respondent – driver faced trial Court in regard to the accident. Claimant – Naresh Kumar filed claim petition No. 91 of

1995 of 1997 seeking compensation for the injuries suffered by him and claim petition No. 92 of 1997 for award of compensation for the damage caused to his jeep. Claim petition No. 90 of 1995 was filed by Siri Chand for award of compensation on account of injuries suffered by him.

Claim petitions were contested by the respondents. The respondents - driver and owner of the tanker asserted that the accident in question occurred due to negligence of the driver of the jeep. Furthermore, liability, if any, would be of the insurance company as the vehicle in question i.e. tanker No. PBW-2185 was duly registered with the respondent - insurance company. Respondent – insurance company denied the accident and pleaded that the driver of the tanker was not holding a valid driving licence at the time of accident, if any.

Learned Tribunal on the pleadings of the parties framed the following issues:

1. Which of the drivers was rash and negligent in causing the accident? OPP.
2. Whether Karam Singh was not holding valid driving licence at the time of alleged accident? OPR
3. Whether Naresh Kumar was not holding valid driving licence at the time of alleged accident? OPR
4. Whether the claimants of all the three claim petitions are entitled to compensation. If so, to what amount and from whom?OPP.
5. Relief.

On evidence being adduced, learned Tribunal held that the accident in question was caused due to rash and negligent driving of the tanker by respondent – Karam Singh. A sum of ₹10,000/- was awarded to the claimant - Siri Chand on account of injuries suffered by him. Siri Chand has not preferred any appeal before this Court for enhancement of the amount awarded to him.

The claimant – Naresh Kumar was awarded a total sum of ₹50,000/- as compensation i.e. ₹10,000/- on account of expenses incurred on medicines and ₹40,000/- on account of pain and suffering, loss of income, special diet etc. The insurance company was held liable. The driving licence of the respondent – Karam Singh having been renewed twice by the Licencing Authority, Karnal reliance was placed by the learned Tribunal on the judgment of ***National Insurance Company Limited versus Sucha Singh and others (1994-1) P.L.R. (P&H) 140,*** and it was concluded that there was no breach of any terms and conditions of the insurance policy which may absolve the insurance company of its liability.

Claimant – Naresh has preferred FAO No. 1493 of 1997 for enhancement of compensation awarded to him on account of injuries suffered by him and FAO No. 1494 of 1997 for enhancement of the amount awarded for the damage caused to his jeep.

FAO Nos. 526, 563 and 564 of 1997 have been filed by the insurance company challenging their liability to pay compensation on the ground that the driver of the offending vehicle was not holding a valid driving licence at the time of accident in question.

Counsel for the appellant – Naresh Kumar submits that the claimant is entitled to further compensation of ₹1,00,000/- as an inadequate amount has been awarded to the claimant, who remained admitted in hospital for a period of about one month. In respect to the damages for the jeep, it is submitted that a sum of ₹46,000/- only has been awarded whereas the appellant is entitled to a total compensation of ₹1,05,000/-. No amount has been awarded on account of expense borne by the appellant for purchasing spare parts amounting to ₹60,000-65,000/-.

Learned counsel for the respondent refutes the said averments and submits that adequate compensation has already been awarded by the learned Tribunal, which calls for no further enhancement.

Having heard counsel for the parties and going through the available record, it is apparent that the appellant has not suffered any disability, permanent or otherwise, on account of the injuries suffered by him in this accident. Injuries suffered by him as per the testimony of PW1, Dr. Nagpal are as under:-

1. The patient was conscious. He was crying with pain. There was flexion, adduction and internal rotation type of deformity of right hip joint and patient could not straightened his leg. Movements were restricted and were very painful. Clinically there was posterior dislocation of right hip joint which was confirmed on x-ray examination.
2. Fresh abrasion 6 cm. X 1 cm. over the anterior part of right leg in its middle.
3. Fresh abrasion over the left knee joint area.

PW1 has deposed that a sum of ₹1,250/- was charged from the injured. Though the appellant has deposed that due to the injuries sustained in this accident, he feels pain in the leg, cannot run and is unable to see properly due to a head injury, however, there is no evidence to substantiate such a plea. The testimony of the doctor PW1, falsifies the claim of a head injury.

Similarly, learned counsel for the appellant is unable to point out any evidence on record, which would indicate loss of income suffered by the appellant. Injured is claimed to be an Agriculturist and running a shop as well. There is no cogent evidence on record, which would compel this Court to hold that any loss of income was indeed caused to the claimant. There is nothing to prove that a shop was being run by the appellant. Even if it is presumed that he was an agriculturist, there is no evidence to show that there was no one else to look after the same or that he suffered a loss due to the accident. Contentions on behalf of the appellant are, thus, untenable in the wake of absence of any evidence. In the peculiar facts and circumstances, a consolidated sum of ₹40,000/- has been rightly awarded by the learned Tribunal on account of pain and suffering, loss of income, special diet etc. as well as ₹10,000/- for medical expenses. A sum of ₹50,000/- has been rightly awarded and calls for no enhancement.

Learned counsel for the appellant has vehemently argued that a sum of about ₹60,000-65,000/- spent on purchase of spare parts of the jeep has been wrongly denied by the learned Tribunal. Learned counsel for the appellant is unable to point out either the make or even the model of the jeep in question. There are admittedly no bills reflecting purchase of the said spare parts. Ex. P19 is the bill of the mechanic wherein he has charged ₹16,800/- for repair/painting of the jeep. Thus, the learned Tribunal has rightly awarded a sum of ₹46,000/- on account of repair of the jeep in question.

Learned counsel for the appellant is unable to point out any evidence on record, which calls for enhancement of this amount.

In FAO Nos. 562, 563 & 564 of 1997 preferred by the insurance company, it is argued by the learned counsel for the appellant - company that reliance by the learned Tribunal on ***National Insurance Company Limited versus Sucha Singh and others*** is not correct as it is a settled position of law that subsequent renewal of a driving licence which is not genuine cannot confer any validity thereon. Reference is made to ***National Insurance Company Limited versus Santro Devi and others*** 1998 (1) R.C.R. (Civil) 156. Therefore, in such a situation, report Ex. R4 placed on record on behalf of the insurance company to the effect that the driving licence was not issued by the Licencing Authority at Gwalior, should have been afforded due deference and the insurance company be absolved of its liability to pay compensation.

Mr. Khanna, learned counsel for the insurance company, however, cannot deny that the onus of proving the driving licence in question to be invalid and fake, is on the insurance company. He can also not refute that a Division Bench of this Court in ***Surjan Ram versus Anchal Singh (Died) 1997 (3) R.C.R. (Civil) 670*** has held that mere production of a report of Surveyor or even examining him in support of his report is not sufficient to prove that the licence was not valid, if it was otherwise valid on the face of it. In the present case, it is not proved as a fact that the driver of the offending vehicle was not holding a valid licence on the date of occurrence of the accident. Reliance on a mere report cannot prove the driving licence to be fake or invalid. Though the foundation of the finding returned by the Tribunal on this point is incorrect, the finding itself regarding the liability of the insurance company cannot be faulted with. Furthermore, it has not been pleaded that the owner of the vehicle in question was negligent in discharge of his responsibility in so far as proper care was not taken to verify the driving licence of the driver. Insurance company has failed to prove any breach of the terms and conditions of the insurance policy. The offending vehicle was duly insured with the company at the time of the accident. Therefore, in the facts and circumstances of the case, it cannot be held that the insurance company is not liable to pay the compensation awarded by the learned Tribunal.

Therefore, in view of the above, all the five appeals, being devoid of any merit, are dismissed with no order as to costs.

(Lisa Gill)
Judge

February 19, 2016
rts