IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2327 of 2000 (O&M)
Date of Decision : 27.05.2016

Tata Engineering & Locomotive ....Appellant

Versus

Birbal ....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kulwant Singh, Advocate
for the appellant.

Mr. Jagjit Singh, Advocate
for Mr. Ashwani Talwar, Advocate
for respondent no. 2.

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Surinder Gupta, J.

This is appeal filed by Tata Engineering and Locomotive against award dated 15.11.1999, whereby the Motor Accident Claims Tribunal, Karnal allowed compensation of ₹3,00,000/- to claimant-Birbal for the injuries received by him in a motor accident with Tata 407 truck bearing temporary No. MH-12/706.

2. Short question which calls for answer in this appeal is as to whether the Tribunal has committed any error of law and fact while exonerating the Insurance Company and making the driver and owner of the offending vehicle liable to pay the compensation?

3. The Tribunal found driving licence of driver of the offending vehicle, namely Maya son of Karam Singh bearing No. 19356/90 or 19357/90 as fake. This licence was alleged to have been issued by the Licencing Authority, Solan and concerned official, namely, Man Singh from the office of Licencing Authority, Solan appeared before the Tribunal as RW-2 and stated that the licence was not issued by their office.

4. Owner of the offending vehicle had produced on record the driving licence of driver of the offending vehicle (Ex. RW-3/A) issued by Licencing Authority, Mathura. The Tribunal did not take note of that driving licence with the observation that driver was *ex parte* and this licence had been produced by owner of the vehicle. Insurance Company had produced on file copy of driving licence of driver of the offending vehicle, which was allegedly taken into possession by police in criminal case. Tribunal observed that owner cannot take a different stand that on the day of accident i.e. 4/05.012.1994, driver of the offending vehicle was holding the driving licence placed on record as RW-3/A.

5. I have heard learned counsel for the parties and perused the record of Tribunal with their assistance.

6. Learned counsel for the appellant has argued that firstly the Insurance Company has not been able to prove that owner of the offending vehicle was in any manner negligent by allowing respondent no. 3-driver of offending vehicle to drive the motor vehicle on the basis of fake driving licence; and secondly, the driving licence, which was found to be fake, was neither produced by driver nor by owner but was called from the file of police challan and it is not proved as to who had given it to police.

7. Police had arrested respondent no. 3 in criminal case registered against him and taken into possession driving licence no. 19357/90 issued by Licencing Authority, Solan. As deposed by PW-2 Sunita Sharma, Ahlmad in the Court of Judicial Magistrate, Karnal, this licence was on file of criminal case. There is no evidence that this document was produced there by owner or driver of the offending vehicle or from whom the police had taken it into possession. Even if it be believed that it was taken into

possession by police from the accused i.e. driver of the offending vehicle, still there was every possibility that driver in order to mislead the police had given fake driving licence. From the statement of RW-3 B.D. Gulati, it is clear that he had given the offending vehicle to driver Maya Singh after checking his driving licence, which was bearing No. L-742-MTR/89 issued on 30.06.1999, which was valid for LMV, HGV and HPV. This licence had been issued by the Licencing Authority, Mathura (UP). He has clarified in his cross-examination that this driving licence was taken by him from his deriver Maya Singh. A suggestion was made to him that driving licence (Ex. RW-3/A) is forged and fabricated but the Insurance Company took no pains to prove this fact on file.

8. The question which calls for attention in this case is as to whether the Tribunal was justified in absolving the Insurance Company from its liability to pay the amount of compensation without looking into the driving licence (Ex. RW-3/A) produced by owner of the offending vehicle and without any evidence that it was a fake licence and on the basis of evidence that the driving licence, which the police had taken into possession, was fake?.

9. On a careful thought to the respective submissions of learned counsel for the parties, I find that the Tribunal has committed grave error while ignoring the driving licence (Ex. RW-3/A) and on the basis of driving licence, which was on police file in criminal case, holding that driver of the offending vehicle was not possessing valid driving licence. Onus under Section 149 (2) of the Motor Vehicle Act was on the Insurance Company to prove the violation of terms and conditions of the insurance policy, which it has utterly failed to discharge by not producing any evidence to prove that

driving licence RW-3/A was fake or invalid.

10. Learned counsel for respondent no.2-Insurance Company has conceded that no application was moved by the Insurance Company before the Tribunal for direction to driver or owner of the offending vehicle to produce the driving licence. RW-3 B.D. Gulati has specifically stated that he handed over the vehicle to driver after checking his driving licence, copy of which has been placed on file as Ex. RW-3/A. There is no evidence on record that this driving licence is fake. So far as driving licence no. 19357/90 issued by Licencing Authority, Solan regarding which PW-2 Sunita Sharma, Ahlmad in the Court of Judicial Magistrate, Karnal has deposed, is concerned, the same cannot be relied upon for the reasons; firstly, that it is not proved to have come from the custody of owner of the offending vehicle; secondly, it is not proved that it was handed over to the police by driver of the offending vehicle; thirdly, even if it be believed that this licence was taken by the police from possession of driver, the possibility that driver may have given a fake licence to the police just to complete the formalities and had retained the genuine and valid licence with him, cannot be ruled out; fourthly, once the respondents have come up and placed copy of the driving licence of respondent no. 3 on file, there was no reason for the Insurance Company to avoid its verification. Silence on the part of Insurance Company with regard to driving licence (Ex. RW-3/A) shows that it did not proceed in the matter for the reasons that it was genuine one; fifthly, Sunita Sharma, Ahlmad has deposed regarding the driving licence on record of criminal case but has not stated as to how it has come on record and who had produced the same; and sixthly, as the driving licence in the record of criminal case file is not proved to have been

produced by owner of the vehicle, the driving licence (Ex. RW-3/A) cannot be termed as a duplicate licence as observed by Tribunal.

11. In view of above facts and circumstances, the observations of learned Tribunal discarding the driving licence (Ex. RW-3/A) are set aside and the findings on issue no. 2, are reversed and recorded against respondent no. 2-Insurance Company. In view of reversal of findings on issue no. 2, the Insurance Company i.e. respondent no. 2 is under liability to indemnify the insured for payment of amount of compensation.

12. This appeal has merit and is accepted and the award passed by the Tribunal is modified to the extent that respondent no. 2-New India Insurance Company Ltd. is held liable to indemnify the insured for payment of amount of compensation awarded by the Tribunal and is held liable to pay the same. Claimant is also entitled to costs of this appeal. Counsel fee is assessed as ₹10,000/-.

May 27, 2016 **(SURINDER GUPTA)**
jk **JUDGE**