bIn the High Court of Punjab and Haryana at Chandigarh

FAO-5145 of 2013
Date of Decision:11.11.2016

Gurbachan Singh

---Appellant

vs.

Harnek Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Saurabh Kaushik, Advocate
for the appellant
None for respondent Nos. 1 and 2
Mr. Nitin Mittal, Advocate
for respondent No. 3

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<u>Rekha Mittal, J.</u>

The present appeal has been directed against award dated 22.8.2013 passed by the Motor Accidents Claims Tribunal, Ludhiana whereby compensation has been awarded to Harnek Singh and another in regard to death of Jaswant Singh out of use of mini truck PB-23-E-9505 owned by Gurbachan Singh (appellant herein).

The sole submission made by counsel for the appellant is that the insurance company cannot be exonerated of its liability to pay compensation as Jaswant Singh was not employed as a driver on the truck in question and he was working as a cleaner without any remuneration who had taken away the truck without permission of the appellant.

Counsel for the insurance company has supported the award with the submissions that as Jaswant Singh driver of the vehicle was himself a tortfeasor and further did not possess a valid driving licence, the insurance company has rightly been exonerated of liability to pay compensation.

There is no representation on behalf of the claimants who were earlier being represented by Mr. Parshant Vashisth, Advocate.

I have heard counsel for the parties, perused the paper book and the records.

It is an undisputed position of the case that Jaswant Singh son of the claimants sustained injuries while driving truck bearing No. PB-23-E-9505 and succumbed to injuries. The application for grant of compensation was filed by Harnek Singh and Smt. Balwinder Kaur parents of the deceased by invoking Section 163A of the Motor Vehicles Act, 1988 (in short “the Act”). The learned Tribunal has negatived plea of the appellant that Jaswant Singh was employed by him as a cleaner or he used to look after his vehicle without any remuneration or on 25.10.2010, Jaswant Singh without any authority or permission took away the vehicle and met with an accident due to his own fault.

Counsel for the appellant has failed to point out any materials on record to successfully challenge observations and findings of the learned Tribunal recorded in paras 14 to 16 of the award. The Tribunal has rightly held that it is difficult to accept to reason that a person would look after the vehicle of another without remuneration. It appears that the appellant raised such a plea so that he may escape his liability to pay compensation to the heirs of the deceased under the Workmen's Compensation Act.

So far as the plea that Jaswant Singh himself was a tortfeasor and, therefore, claimants cannot seek compensation even under Section

163-A of the Act, the Tribunal has rightly held by relying upon judgment of Hon'ble the Supreme Court of India **National Insurance Company vs. Sinitha and others 2012(1) RCR(Civil) 205** that the mere fact that the deceased sustained injuries while driving the truck in question and hit against a tree is not sufficient to record a finding that the accident took place due to his own negligence. There is no evidence adduced by the appellant or the insurance company to establish that Jaswant Singh was a tortfeasor and the claimants are not entitled to compensation even though they are not obligated to plead and establish 'wrongful act' 'neglect' or 'default' for sustaining their claim under Section 163-A of the Act. In this view of the matter, I do not find merit in contention that he (appellant) is liable to be exonerated.

This brings the Court to the plea with regard to liability of the insurance company. As per settled position in law, provisions of Sections 163-A and 166 of the Act are a beneficial legislation to compensate the victims of motor vehicular accidents. Plea of the appellant that the deceased was not working as a driver with him or he was a tortfeasor has been negatived by the Tribunal and affirmed by me in view of discussion made hereinbefrore. However, it has been proved on record that Jaswant Singh did not possess a valid driving licence at the time of occurrence. Counsel for the appellant has not challenged the findings of the Tribunal recorded in para 16 that Smt. Usha Rani Clerk DTO Office, Ludhiana has proved that licence No. 22415/2006 was not issued by her office in the name of Jaswant Singh son of Harnek Singh resident of village Bulara District Ludhiana. As driver was not holding a valid driving licence, it amounts to violation of the terms and conditions of the contract of insurance, constituting a defence under Section 149(2) of the Act. Nevertheless, the insurance company cannot escape its liability to satisfy the award towards claimants. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India ***National Insurance Company Limited vs. Swaran Singh and others 2004(2) RCR(Civil) 214***. That being so, the insurance company shall be liable to pay compensation to the claimants but entitle to recover the amount from the insured by filing an application for execution before the Tribunal. In view of the above, award passed by the Tribunal exonerating the insurance company of its liability to pay compensation is modified in the aforesaid terms.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. No order as to costs.

(Rekha Mittal)
Judge

11.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No