IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2945 of 2016(O&M)
Date of Decision: May 26, 2016

National Insurance Company Limited ...Appellant

Versus

Mam Chand and another ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ravinder Arora, Advocate and Mr. Neeraj Khanna, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

For the reasons mentioned in the application, delay of 29 days in filing the appeal is condoned.

This is an appeal by the Insurance Company (National Insurance Company Limited) against the Award dated 3.11.2015 passed in MACT Petition No.198 of 2014 by the Motor Accident Claims Tribunal, Chandigarh (for short `the Tribunal'), whereby, a sum of Rs.47,784/- along with interest was ordered to be paid as compensation on account of injuries sustained by respondent - Mam Chand in a vehicular accident.

Brief facts of the case are that on 26.05.2014, Mam Chand was the pillion rider upon Activa No.PB-65-W-2624 driven by Anish (deceased). They were going from MLA Hostel, Punjab, Sector 1, Chandigarh to Sector 39, Chandigarh and the scooter was being driven on its correct side of the road at a normal speed. When it reached near the residence of Haryana

Chief Minister, Chandigarh, it was hit by motorcycle No.CH-01AU-7343, which was being driven rashly and negligently by Devi Dutt. As a result of this collision, Anish and Devi Dutt, the drivers of both the two-wheelers lost their lives, while respondent Mam Chand's intestine was fractured. He was admitted in the PGI and was operated upon.

Mam Chand filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that he was aged 45 years and was a Carpenter and earning Rs.10,000/- per month. He suffered multiple injuries on vital organs of his body including intestine rupture and was operated upon. It was also stated that the accident had been caused due to rash and negligent driving of the motorcycle.

Upon notice, respondent No.2-Girish Chander (Owner of the offending motorcycle No.CH-01-AU-7343) filed written statement, stating that the offending vehicle was fully insured with appellant – Insurance Company. The appellant - insurer filed separate written statement stating that the driver of the offending vehicle i.e. Devi Dutt (since deceased) was not holding a valid and effective driving licence and that the accident took place due to rash and negligent driving of scooter No.PB-65-W-2624 by Anish Kumar and driver of motorcycle No.CH-01-AU-7343 was not at fault.

Pleadings of the parties led to the framing of following issues:-

> "*1. Whether claimant suffered injuries in a motor vehicular accident, which was caused due to rash and negligent driving of motorcycle No.CH-01-AU-7343 by respondent No. 1? OPP.*
>
> *2. Whether the claimant is entitled to compensation on account of injuries suffered by him in a motor vehicular accident? OPP.*

3. Whether the driver of offending vehicle was not holding a valid driving licence at the time of accident? OPR-3

4. Relief."

Issue No.1 was decided in favour of the claimant and it was held that the accident had taken place due to rash and negligent driving of the offending motorcycle by Devi Dutt Bhatt (since deceased). In the absence of proof of income of the Mam Chand, the Tribunal assessed his income at Rs.7000/- per month. Based on the medical bills produced and keeping in view the nature of injuries of the claimant, who suffered rupture of intestine and multiple injuries on all over body and that he must have remained on bed for a minimum period of two months, the Tribunal assessed the compensation as under:-

No.	Head	Amount(Rs.)
1	Medical charges	Rs.3,784/-
2	Transportation charges	Rs.5,000/-
3	Compensation for engaging an attendant.	Rs.5,000/-
4	Compensation for special diet.	Rs.10,000/-
5	Pain and suffering and loss of enjoyment	Rs.10,000/-
6	Compensation for loss of income	Rs.14,000/-
	Total	Rs.47,784/-

However, in view of the finding that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, the appellant- Insurer was granted the right to recover the amount of compensation from the owner of the offending vehicle.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

The sole argument of Ld. Counsel for the appellant – insurer is that once the Tribunal has returned a finding that the driver of the offending motorcycle was not having a valid and effective licence, then, it being a case of violation of terms and conditions of the insurance policy, the appellant – insurer could not be directed to first indemnify the loss caused by the vehicle and then recover the same from the owner of the offending vehicle.

It has been argued that the condition precedent for the application of the rule `pay and recover' is that there should be a valid policy of insurance and that there is no breach of the terms of the policy. Hence if any ground for avoiding liability as specified in Section 149(2) of the Motor Vehicles Act, 1988 is established, which includes the ground of the vehicle being driven by a person not having a valid driving licence, then there is no liability on the part of the insurer to pay the amount decreed or awarded under Section 149(1). Consequently, when the liability is avoided on one of the grounds mentioned in Section 149(2), there is no liability to pay the amount decreed or awarded and consequently the question of directing the insurer, in these circumstances, to pay and then recover would not arise.

The argument of the Ld. Counsel cannot be accepted.

The principle of `pay and recover' was examined in detail by this Court in **FAO No.2299 of 2016** titled **`The Oriental Insurance Company Ltd. vs. Smt.Archana and others**' decided on 3.5.2016, wherein, on a consideration of various decisions of Hon'ble Supreme Court it was concluded that, depending upon the facts and circumstances, in cases where the vehicle was not being driven by a duly licensed person, the Tribunal or the High Court may direct the insurer to first pay the compensation amount and thereafter to recover the same from the insured.

In view of above, there is no merit in the contention raised on behalf of the appellant – Insurance Company.

No other point was raised.

The appeal is dismissed.

May 26, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**