

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 433 of 2003 (O&M)

DATE OF DECISION : 30.08.2017

The New India Assurance Company Limited

.... APPELLANT

Versus

Manjit Kaur and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Neeraj Khanna, Advocate,
for the appellant.

None for the respondents.

* * *

AVNEESH JHINGAN, J.

The present appeal is directed against the award dated 05.09.2002 passed by the Motor Accident Claims Tribunal, Kapurthala (hereinafter referred to as 'the Tribunal').

2. There was an accident on 23.02.1999 between truck bearing registration No. PB-08P-9982 and truck bearing registration No. MP-23D-5927 (truck No. MP-23D-5927 referred to as 'the offending vehicle'). In the said accident, due to rash and negligent driving of the offending vehicle, Gurnam Singh driver of truck No. PB-08P-9982 lost his life. Baldev Singh was the second driver along with the deceased and he was eye witness to the accident.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the widow, four minor children (three daughters and one son) and mother of the deceased.

4. The claim petition was contested only by the New India Assurance Company (hereinafter referred to as 'Insurance Company') and written statement was filed. Besides other pleas, a general plea was raised that driver of the offending vehicle was not holding a valid driving license.

5. The Tribunal framed the following issues :-

- “(1) Whether the petitioners are the legal heirs and dependents of Gurnam Singh deceased ? OPP
- (2) Whether Gurnam Singh died in the accident allegedly caused by the offending vehicle driven by respondent No.2 rashly and negligently ? OPP
- (3) Whether the petitioners are entitled to the compensation, if so, to what extent and from whom ? OPP
- (4) Whether respondent No.2 was having a valid driving licence at the time of accident ? OPR”

6. The Tribunal, on the basis of evidence and the witnesses produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The dependency of the deceased, after deducting personal expenses etc. from gross monthly income, was considered to be ₹ 3,200/- per month. Applying a multiplier of 16, a sum of ₹ 6,14,400/- was awarded as compensation along with interest at the rate of 9% per annum. The offending vehicle being insured, the Insurance Company as well as the owner and driver of the offending vehicle, were held jointly liable to pay compensation.

7. Aggrieved of the said award, the Insurance Company filed the present appeal.

8. Though in the grounds of appeal, as many as seven grounds have been raised, but while arguing the appeal, only grounds No. (a) and (b) have been pressed. The basic issue raise by the Insurance Company is that driver of the offending vehicle was not holding a valid driving licence at the time of the accident and the Tribunal failed to decide issue No.4 regarding validity of the driving licence.

9. I have heard learned counsel for the Insurance Company and perused the paper-book with his able assistance.

10. The grievance of the Insurance Company was that though issue No.4 was framed by the Tribunal as to “Whether respondent No.2 was having a valid driving licence at the time of accident? OPR”, but the said issue was not decided. Learned counsel contended that an objection regarding validity of the driving licence was also raised in the written statement.

11. The argument raised by learned counsel for the Insurance Company is devoid of merit. There is no denial to the fact that a general objection regarding validity of licence was raised by the Insurance Company. But the fact remains that no evidence, witness or material was produced either before the Tribunal or in this court, in support of the said objection.

12. The Hon'ble Apex Court in *National Insurance Co. Ltd. Vs.*

Swaran Singh and others, 2004 (2) RCR (Civil) 114, relying upon its earlier decisions in **Sohan Lal Passi Vs. P. Sesh Reddy and others**, 1996 SCC (5) 21 and **Rukmani and others Vs. New India Assurance Co. Ltd. and others**, 1999 ACJ 171, has held as under :-

“66. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability.”

13. In the above decisions, the Apex Court has held that the onus is on Insurance Company to prove that the driving licence was not valid.

14. In the present case, merely an objection was raised by the Insurance Company that the driver was not holding a valid driving licence. This objection was not supported by any evidence. Merely raising the plea of validity of licence would not be enough. The Insurance Company failed to discharge onus placed on it.

15. Before this court, in the appeal, the Insurance Company tried to raise a plea that driver of the offending vehicle was not in possession of a valid driving licence on the day of the accident. Vide interim order dated 28.01.2003, while recording the said contention, this court afforded an opportunity to learned counsel for the Insurance Company to place on

record a photocopy of the driving licence produced before the Tribunal along with any other attending circumstances considered appropriate. The said order is re-produced below :-

“Learned counsel for the appellant states that even as per the driving licence of the driver of the truck bearing registration No. MP 23-D-5927, the driver was not possessing a valid driving licence on the date of the accident, namely, 23.2.1999.

There is no material on the record of this case to authenticate the aforesaid contention of the learned counsel for the appellant. In view of the above, liberty is granted to the learned counsel for the appellant to place on the record of this case a photocopy of the driving licence produced on the record of the Motor Accident Claims Tribunal, Kapurthala alongwith any other attending circumstances considered appropriate.

Adjourned to 31.3.2003. Needful be done in the meantime.”

Before deciding the instant appeal, another opportunity was granted vide order dated 28.07.2017 to learned counsel for the Insurance Company to do the needful. But no material or circumstance was produced before this court.

16. The objection of the Insurance Company that issue No.4 framed by the Tribunal was not decided is of no significance. From the above discussion, it is clear that a mere objection with regard to validity of the

driving licence was raised in the written statement. There was no serious effort to take this objection to a logical end. Even if the Tribunal would have dealt with it, the conclusion would have been same. Hence, no prejudice is caused to the Insurance Company. The Insurance Company failed to discharge the required onus as per law. The Insurance Company cannot be allowed to run away from its liability by merely raising an objection in the written statement and without substantiating the same.

17. No other argument has been raised.

18. In view of the above discussion, the appeal stands dismissed and the impugned award dated 05.09.2002 passed by the Tribunal is upheld.

August 30, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes