IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2721 of 2000
Date of Decision: 23.01.2017

National Insurance Company Limited ....Appellant

Versus

Smt. Saroj Bala and others ....Respondents

FAO No.2722 of 2000

National Insurance Company Limited ....Appellant

Versus

Smt. Sweety and others ....Respondents

FAO No.2731 of 2000

National Insurance Company Limited ....Appellant

Versus

Smt. Rekha and others ....Respondents

FAO No.2734 of 2000

National Insurance Company Limited ....Appellant

Versus

Smt. Sita Rani and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. V. Ramswaroop, Advocate
for the appellant.

Mr. V.M. Gupta, Advocate
for respondent No.1
in FAO Nos.2721, 2722 and 2731 of 2000
and LRs of respondent No.1 and
respondents No.2 to 4 in
FAO No.2734 of 2000.

None for respondents No.2 and 3

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DAYA CHAUDHARY, J.

By this judgment of mine, four appeals bearing ***FAO No.2721 of 2000, FAO No.2722 of 2000, FAO No. 2731 of 2000*** and ***FAO No.2734 of 2000*** shall be disposed of as common question of law and facts are involved in all these cases. However, for the sake of convenience, the facts are being derived from ***FAO No.2721 of 2000***.

The appellant-Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Ludhiana (here-in-after referred to as `the Tribunal') dated 05.08.2000, whereby, the claim petitions filed by the claimants were allowed and they have been awarded compensation from the date of filing claim petition till actual payment.

Briefly, the facts of the case are that on 25.05.1997 at about 2.30 a.m., the deceased, namely, Dwarka Dass Aggarwal along his son Sudarshan Kumar, daughter-in-law Sweety, Saroj Bala and Rekha, grand-children Sachin, Jyoti, Rishav, Honey, Ghoney, Kaku, Sakshi were going from Hoshiarpur to Malerkotla after attending the marriage of son of one Som Nath. Sudarshan Kumar along with his wife and daughter were in Maruti car, whereas, Dwarka Dass Aggarwal deceased along with his daughters-in-law Sweety, claimants Saroj Bala, Rekha and grand children Sachin, Jyoti, Rishav, Honey, Ghoney and Kaku, was in Tata Sumo No.PB-10X-313, which was being driven by Randhir Singh and owned by Abdul Rashid. One tractor trolley loaded with sugarcane was parked on the metallic road due to some defects in it. Tata Sumo hit from behind the other tractor trolley going ahead with sugarcane loaded in it. Due to impact, Sh. Dwarka Dass Aggarwal and other occupants of Tata Sumo received multiple and grievous injuries. Claimant Saroj Bala received close head injury with contusions/Dos with fracture on left side and fracture on right leg. There were injuries on the other parts of the body. Dwarka Dass Aggarwal died on the spot and other injured were referred to the hospital for treatment.

As per claim petition, the accident had occurred due to rash and negligent driving of the driver of Tata Sumo which was being driven at a very high speed without observing the traffic rules.

Notices in the claim petitions were issued and the respondents were served. They filed separate written statements and contested the claim on the ground that the accident did not occur due to fault of driver of the Tata Sumo but due to the fault of tractor No.PB-32-9838. No FIR was registered and only DDR No.22 was recorded on 27.05.1997. Respondents prayed for dismissal of claim petitions but claim petitions were allowed by the Tribunal vide award dated 05.08.2000. The amount of compensation was awarded along with interest from the date of filing of claim petition till actual payment against respondents No.1 to 3 and liability of the respondents was held to be joint and several. The claim petition was dismissed against respondents No.4 and 5. The awards passed by the Tribunal have been challenged by the Insurance Company before this Court by filing four separate appeals.

Learned counsel for the appellant submits that the award passed by the Tribunal is based on conjecture and surmises and findings recorded by the Tribunal is contrary to the facts and evidence available on record. The amount of compensation awarded by the Tribunal is on the higher side and the same has been granted without appreciation of evidence.

Sudarshan Kumar was alleged to be an eye witness of the incident and he is the son of deceased and was examined as AW-1. Said witness was an interested witness and has supported the case of the claimants being interested witness. Rash and negligent driving of the driver of the offending vehicle was not proved by an independent witness. Learned counsel also submits that the Tata Sumo is an omni bus and the same has been defined under Section 2(29) of the Motor Vehicles Act. As per definition, "omni bus" means any motor vehicle constructed or adopted to carry more than six persons excluding the driver. The sitting capacity of Tata Sumo, which was involved in the accident, is of 10 persons and is an "Omni bus" and the said vehicle falls under the definition of "light motor vehicle" as defined under Section 2(21) of Motor Vehicles Act. By considering the definition of Omni bus, "Tata Sumo' falls under the definition of "Omni bus" and the driver of the offending vehicle was not possessing valid driving license, hence, the Insurance Company was not liable to pay compensation to the claimants.

Learned counsel for the appellant also submits that the Tribunal has relied upon document Exhibit R-3 and the Insurance Company has made admission to accept the driving license of the Car for Tata Sumo as well. Even the respondents no.2 and 3 have failed to prove the document Exhibit R-3. Learned Tribunal has also not discussed all these issues while awarding compensation, therefore, the appeals may be allowed.

Learned counsel for the claimant respondents submits that the award passed by the Tribunal is well reasoned and the amount of compensation paid to the claimants cannot be said to be on the higher side. The award was passed after proper appreciation of evidence and in accordance with law and procedure. It was proved on record that the accident occurred due to rash and negligent driving of the driver of offending vehicle, which was insured with the appellant-Insurance Company. The award was ordered to be paid to the claimants by respondents No.1 to 3 jointly and severally.

Heard the arguments of learned counsel for the parties and have also perused the award passed by the Tribunal and other documents available on the file.

The facts relating to accident and filing of claim petition by the claimants as well as award passed by the Tribunal in favour of the claimants are not disputed. The following issues were framed by the Tribunal on 13.11.1998 ;

> *"1. Whether Randhir Singh caused the death on 25.5.97 by driving Tata PB-10X-313 rashly and negligently resulting in the death of Dwarka Dass Aggarwal ? OPA*
> *2. To what amount of compensation the applicant are entitled to? If so from whom? OPA*
> *3. Relief."*

Subsequently, an additional issue was also framed on 28.07.2000, which is reproduced as under :-

> *"2A- Whether the respondent No.1 Randhir Singh was not holding a valid and effective driving licence of Tata Sumo No.PB-10X-313 at the time of accident? OPR-3"*

While deciding issue No.2A, it has been mentioned by the Tribunal that the issue "as to whether the driver of the offending vehicle was not holding a valid and effective driving licence" is the responsibility of respondent No.3 to prove that the driver was not holding a valid and effective driving license of Tata Sumo at the time of accident. The material statement of RW-1 Gurcharan Singh, Transport Clerk is relevant on this point, who has testified on oath that he has brought the original record of license of the driver of the offending vehicle, which was issued to Randhir Singh on 19.03.1997. He had proved the photocopy of the driving license (Exhibit R-1). He has stated that the driving license was meant for driving car, scooter and jeep. The Tribunal, while deciding issue No.2-A, has specifically stated that the perusal of driving license Exhibit R-1 had proved on record that it was issued on 19.03.1997 and was valid up to 11.02.2024. It was valid for scooter, jeep and car. The offending vehicle was insured with the Insurance Company as the insurance policy was proved as Exhibit R-2.

By considering the submissions of both the parties, it has been held by the Tribunal that in case, a person is entitled to drive a jeep, he cannot be deprived from driving Tata Sumo Vehicle. Issue no.2-A was not proved on record by respondent No.3 and as such, it was decided against respondent No.3. Learned counsel for the appellant has put an emphasis only on the ground that Issue no.2-A was wrongly decided as “Tata Sumo” cannot be considered at par with Jeep as it falls under the definition of “Omni Bus” which has been defined under the Motor Vehicles Act. As per statement of RW-1 Gurcharan Singh, Transport Clerk, the driving license of the driver of offending vehicle was meant for driving car, scooter and jeep, which has been exhibited as R-1. Validity qua to period has not been disputed as it was valid up to 11.02.2024.

Now the question for consideration of Issue no.2 is as to whether the driving license of driver of Tata Sumo was valid for Tata Sumo or not.

The Tribunal has given a finding that the driving license was valid for jeep and car and by considering Tata Sumo at par with jeep, it was made applicable to Tata Sumo also. Under section 2(21) of the Motor Vehicles Act "Light Motor Vehicle" has been defined, which is as under :-

> *"2(21) "Light Motor Vehicle" means a transport vehicle or omni bus the gross vehicle weight of either or which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 6000 Kilograms.*"

Section 2(26) of the Motor Vehicles Act has defined Motor Car, which means any motor vehicle other than a transport vehicle, omni bus, road roller, tractor, motor cycle or invalid carriage.

Similarly, Section 2(29) relates to definition of "Omnibus", which means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

The registration certificate of Tata Sumo was exhibited as R-5 and as per registration certificate, the sitting capacity of Tata Sumo was 10 in all. As per Section 2(29) of the Motor Vehicles Act, Omni Bus means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

In case, the capacity of Tata Sumo is taken into consideration by considering the definition given under the Act then Tata Sumo comes under the definition of Omnibus.

Now the question for consideration before this Court is as to whether the driver, who was possessing a license to drive "Light Motor Vehicle" could drive light motor vehicle, which is having a capacity of more than six persons.

In judgment of Hon'ble the Apex Court in case ***Kulwant Singh and others vs Oriental Insurance Company Limited 2015(2) SCC 186***, it was held that the driver possessing driving licence for driving “light motor vehicle” but was driving “light goods vehicle”. Said vehicle was used as a commercial vehicle, without obtaining any endorsement to drive a commercial vehicle. It was held that the Insurance Company could not disown its liability. In that case, the driver was holding a valid driving licence to drive light motor vehicle and the accident was with Mahindra Maxi Cab. This Court has held that in absence of any endorsement in the driving licence to drive Mahindra Maxi Cab, the Insurance Company was not liable to pay compensation because the driver was not holding the licence to drive commercial vehicle. The judgment of Madras High Court was set aside by Hon'ble the Apex Court.

In the present case also, it has not even come on record that the driver was driving the commercial vehicle. The only requirement of the driving licence is that the driver was holding a valid licence on the date of accident to drive light motor vehicle.

This Court in ***Sandeep Sharma vs Baljeet Kaur and others 2014(77) RCR (Civil) 890*** has held that the Insurance Company cannot get rid of its third party liability. The Insurance Company can recover the amount from owner of vehicle. The appeal filed by the Insurance Company was disposed of by relying upon the judgment of Hon'ble the Apex Court in case ***National Insurance Company Limited, Chandigarh vs Nicolletta Rohtagi and others 2002(7) S.C. 251*** by holding that the mere fact that there was violation of the terms and conditions subject to which the insurance policy had been issued, cannot have the effect of exonerating the insurer from the statutory liability cast upon him in this regard to pay the amount to the third party victim.

Similarly, in Division Bench judgment of Allahabad High Court in case ***National Insurance Company Limited vs Kudesia Hashmi and others 2013(50) RCR (Civil) 515***, it was held that the person having licence to drive light motor vehicle can drive commercial vehicle also and the insurance company cannot escape from its liability to pay compensation. The appeal filed by the Insurance Company was dismissed.

In view of the facts and law position as discussed above, there is no force in the arguments raised by learned counsel for the appellant and as such, all the abovementioned four appeals, being devoid of any merit, are hereby dismissed.

However, the appellant-Insurance Company is directed to release the amount of compensation to the claimants, if not already released, within a period of one month from the date of receipt of certified copy of this order.

The abovementioned all four appeals are accordingly dismissed.

(DAYA CHAUDHARY)
JUDGE

23.01.2017
gupreet

Whether speaking/reasoned Yes

Whether Reportable Yes