In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 13.12.2017

FAO No. 2784 of 1999

National Insurance Company Limited

---Appellant

versus

Reeta Dhingra and others

---Respondents

FAO No. 2785 of 1999

National Insurance Company Limited

---Appellant

versus

Reeta Dhingra and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. V.Ramswaroop, Advocate
for the appellant-insurance company in both the appeals

None for respondent No. 9 in FAO- 2784 of 1999

Mr. Vinod Chaudhari, advocate
for United India Insurance Company

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Rekha Mittal, J.

This order will dispose of FAO Nos. 2784 and 2785 of 1999 whereby challenge has been laid to award dated 11.5.1999 passed by the Motor Accidents Claims Tribunal, Nawanshahr (in short “the Tribunal”) whereby compensation in regard to death of Shushil Kumar Dhingra and injuries sustained by Pankaj Dhingra son of Shushil Kumar Dhingra in a motor vehicular accident that took place on 26.4.1995 due to rash and negligent driving of Matador DL-1C-D-7732 by its driver Balkar Singh, has been awarded.

Counsel for the appellant-insurance company, at the outset would inform that appeals have been preferred to assail findings of the Tribunal on issue No. 8 "whether there was any breach of terms and conditions of the Insurance Policy of Matador No. DL-1C-D-7532. If so, to what effect". Counsel, in this regard, has made submissions primarily on two counts. The first submission made by counsel is that as the offending vehicle was being used as a taxi for hire or reward, insured of the vehicle namely Satnam Singh is guilty of violating terms and conditions of the policy. To bring home his contention, it is argued that one of the occupants of the ill-fated Matador namely Dharam Pal Singh, XEN, Punjab State Electricity Board, Nawanshahr PW3 was examined to prove the accident. In his cross examination by counsel representing the insurance company before the Tribunal, he has deposed to the following effect:-

> "We had started from Garshankar on our back journey. We had left on this matador from Guraya to Garhsanker earlier. We had settled to pay Rs. 1000/- to the owner of the matador, volunteered that we did not pay the amount since the accident had taken place. We had engaged this matador as a taxi for private purpose. I alongwith others had gone to attend meeting at Garhshanker called by SE Operation Circle Nawanshahr. There were four male members, three were the ladies and three were the children. Three ladies including my wife, Mr. Shushil Kumar Dhingra's wife and Harbhajan Singh's wife who is SDO alongwith us. Among the children two were

the children of Mr. Dhingra and one of my child. We had settled that for to and fro from Guraya to Garshankar and back we shall be paying Rs. 1000/- to the owner of the matador. I cannot say if the driver of the matador was also not holding a valid driving licence."

It is further argued that Satnam Singh, owner of the Matador appeared in the witness box. In his cross examination by counsel for the respondents, he has deposed that he purchased the Matador after having taken loan from the bank i.e. State Bank at Phagwara. He was paying instalment of Rs. 5000/- per month. He was then getting Rs. 125/- per day as wages by doing the work of mason. Except mason earning he did not have any other source. Volunteered, his nephews used to pay the instalment of the bank. According to counsel, in view of facts elicited in cross examination of Dharampal Singh PW3 coupled with financial status of Satnam Singh who had purchased the Matador by availing loan from bank and had even employed Balkar Singh as a driver, it can be safely concluded that the insured had been using the vehicle in question for hire or reward that amounts to violation of the terms and conditions of the contract of insurance.

Another submission made by counsel is that Balkar Singh did not possess driving licence on the day of occurrence which entitles the insurance company to press for recovery right against the insured after satisfying award towards the claimants. For this purpose, he has carried this court through statement of Satnam Singh, Clerk in the office of DTO, Hoshiarpur RW2.

There is no representation on behalf of respondent Nos. 6 and 9 (driver and owner of Matador respectively) to counter the submissions made by counsel for the appellant.

I have heard counsel for the appellant, perused the paper book and copies of documents supplied during the course of hearing as records have been burnt in a fire incident.

Indisputably, on the day of occurrence i.e. 26.4.1995, Matador in question was being used by the employees of PSEB, Nawahshahr. Sh.S.K.Dhingra was Assistant Executive Engineer in the PSEB. The injured victim is the son of Sh. Sushil Kumar Dhingra. Dharampal Singh PW3, XEN of PSEB posted at Nawanshahr and one of the occupants of the Matador appeared in the witness box to corroborate plea of the claimants that accident was caused due to rash and negligent driving of Matador by Balkar Singh, its driver. In his cross examination by counsel representing the appellant-insurance company before the Tribunal, he has categorically admitted that the Matador was hired on payment of Rs. 1000/- to owner of the vehicle. The fact that payment could not be made because of the accident, is not sufficient to mitigate against violation committed by the insured by using the Matador for hire or reward.

As has been rightly argued by counsel for the appellant, it is difficult to accept to reason that a person working as a mason and earning Rs. 125/- per day would have incurred liability of purchasing the Matador by availing loan from the bank creating liability to pay interest and engaging a driver on payment of salary without being used as a taxi. There is no explanation by the insured as to for what use, he purchased the matodor if it was not to be plied for generating income. The statement of insured that instalment of loan was paid by his nephew does not get corroboration from any source whatever. In view of the above, I find merit in contention of the appellant that the insured is guilty of violating terms and conditions of the policy prohibiting use of the vehicle for hire or reward.

This brings the court to the contention that driver did not possess a valid licence. Perusal of testimony of Satnam Singh RW2 leaves no manner of doubt that initially Balkar Singh was issued a licence which was valid upto 16.5.1994. Later, this licence was renewed by DTO, Hoshiarpur from 12.5.1995 to 11.5.1998. The occurrence in question took place on 26.4.1995 and on that day, Balkar Singh did not possess a licence to drive the vehicle. Satnam Singh in the concluding line of his cross examination by counsel for respondent No. 6 before the Tribunal has deposed that the licence was offered for renewal in their office on 11.5.1995 by Balkar Singh meaning thereby that there was not even an application pending on 26.4.1995 for renewal of the licence in question. In this view of the matter, the appellant has established on record that Balkar Singh did not possess a licence to drive the vehicle on the day of accident. The insured is guilty of violating the terms and conditions of the policy giving the vehicle for driving to a person who did not possess a licence on the day of occurrence. As the insured is guilty of violating the terms and conditions of contract of insurance on two counts namely using the vehicle for hire or reward and giving the vehicle for driving to a person who did not possess a licence, the insurance company is entitled to recovery right against the insured after satisfying the award qua the claimants. Accordingly, findings recorded by the Tribunal on the aforesaid two aspects are set aside accordingly.

For the foregoing reasons, the appeals are partly allowed in the terms stated hereinbefore. Resultantly, the insurance company shall be liable to pay compensation to the claimants but would be entitled to recover the same from the insured after satisfying the award towards the claimants.

No order as to costs.

(Rekha Mittal)
Judge

13.12.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No