IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2128 of 2006
Date of Decision.09.11.2017

United India Insurance Company Ltd. ....Appellant

Vs

Sumitar Kaur and others ....Respondents

2. **FAO No.2129 of 2006**

United India Insurance Company Ltd. ....Appellant

Vs

Pritam Singh and others ....Respondents

Present: Mr. R.N. Singal, Advocate
for the appellant.

Mr. Jasraj Singh, Advocate
for respondent No.6 in FAO No.2128 of 2006 and
for respondent No.2 in FAO No.2129 of 2006.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals filed at the instance of the insurance company whereby two claim petitions bearing No.147 of 2004/2005 titled as "Sumitar Kaur and others Vs. Navpret Singh and others" (hereinafter called the "1st Case") and 149 of 2004/2005 titled as "Pritam Singh Vs. Navpreet Singh and others" (hereinafter called the "2nd Case") were preferred in respect of an accident having taken place on 26.10.2004. In the 1st case, claim petition had been preferred on behalf of the legal representatives of deceased-Avtar Singh and in the 2nd case, by one Pritam Singh on account of injuries suffered by him.

As per the pleadings set up in the claim petition, the deceased and injured in the aforementioned cases were coming to village Nalvi from Ambala City on motor cycle bearing registration No.HR-07F-7754 driven by deceased-Avtar Singh and when they reached near Segta turn after crossing village Naggla, a maruti car bearing registration No.PB-10-AZ-2055 being driven rashly and negligently by respondent No.1 came from the opposite side and hit the aforementioned motor cycle, resulting into death of Avtar Singh whereas Pritam Singh suffered multiple and grievous injuries.

Before the Tribunal, claimants examined Dr. Ashok Sarwal as PW1, Sukhdev Singh, Clerk of the SDEO, Thanesar as PW2 and Surinder Mohan, Assistant of the Office of DEO, Kurukshetra as PW5. Documents such as bed head ticket Ex.P1, injury report Ex.P2 and referral slip Ex.P3, salary certificate Ex.P4 and FIR Ex.P5 and discharge and follow up card of Pritam Singh Ex.P7, disability certificate Ex.P8, certified copy of report under Section 173 Cr.P.C Ex.P9, attested copy of jamabandi Ex.P10, medicine bills Mark-1 to Mark-38 and various other marked documents were also produced. The insurance company during the pendency of the aforementioned claim petition, moved an application dated 09.01.2006 for issuance of appropriate directions to the claimants to produce the driving licence of the driver of the offending vehicle.

Mr. R.N. Singal, learned counsel appearing on behalf of the insurance company submits that the insurance company was deprived of the driving licence to verify the authenticity and genuineness. In this regard, they had summoned the Criminal Ahlmad as RW-2 from the trial Court where the criminal case was pending but challan did not contain any driving licence. Therefore, the finding of the Tribunal fastening the liability on the insurance company is not sustainable. Had copy of the driving licence been produced, the insurance company would have discharged the onus to verify its correctness and in case the driving licence had not been found to be genuine, the insurance company was entitled for recovery rights but in the absence of the same, the liability cannot be fastened upon it. Therefore, the finding of the Tribunal qua liability is liable to be modified.

In his regard, he also referred to the statement of witnesses wherein none of the witness brought on record copy of the driving licence. Neither owner nor driver of the vehicle had stepped into the witness box. In fact they were proceeded against ex parte. They knew the consequential effect of not contesting the matter.

Mr. Jasraj Singh, learned counsel appearing on behalf of the driver submits that for proving the fakeness or ingenuity of the driving licence, the onus was on the insurance company. Having failed to discharge the same, the award of the Tribunal cannot be tinkered with. He relied upon copy of the certificate Annexure R-1 issued by office of District Transport Officer, Ludhiana, Punjab to the effect that the licence bearing No.149411 had been issued by office on 13.07.1998 which is valid upto 12.07.2018. The aforementioned document Annexure R-1 was sought to be placed on record vide misc. application bearing No.3175-CII of 2015 but the same was ultimately dismissed as withdrawn.

I have heard learned counsel for the parties and appraised the paper book. The evidence as noticed above does not reveal that copy of the driving licence was ever brought on record giving chance to the insurance company to discharge the onus with regard to its fakeness and validity. Moving of the application for production of licence has not been controverted. It is settled law that the onus of proving the genuineness and validity of the driving licence is always on the insurance company provided that it has been given a copy of the same. RW-2, Criminal Ahlmad from the

Criminal Court where the driver was facing criminal prosecution stated that in the cross examination that he did not know whether there was any DL of Avtar Singh or not. Thus, the Tribunal in case non-production of copy of driving licence on record ought to have drawn an adverse inference. No effort had been made by the owner and driver for placing on record copy of the driving licence to give an opportunity to the insurance company at this stage to examine its genuineness validity despite had been availed an opportunity, as reflected in the order dated 23.10.2017, which reads thus:-

> "*Learned counsel appearing for the driver seeks short accommodation to move an appropriate application for placing on record the driving licence which, according to him, was valid at the time of accident and oher particulars enabling the insurance company to ascertain its authenticity.*
>
> *Adjourned to 09.11.2017.*
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> *A photostat copy of this order be placed on connected case.*"

In the absence of the same, I am of the view that the finding of the Tribunal in fastening the liability on the insurance company being indemnifier is not sustainable and hereby set aside, in essence, the insurance company is given recovery rights to recover amount of compensation from the owner and driver of the offending vehicle after satisfying the award in accordance with law. The appeals filed by the insurance company stands allowed to the above extent.

(AMIT RAWAL)
JUDGE

November 09, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No