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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4919-2011 (O&M)
Date of decision : 18.08.2017

New India Assurance Company Ltd.

... Appellant(s)

Versus

Kasturi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vinod Gupta, Advocate
for the appellant.

Mr. Saurabh Garg, Advocate
for respondent Nos.5 and 6.

AMIT RAWAL, J. (ORAL)

The appellant-Insurance Company is aggrieved of the award dated 10.05.2011 passed by the Motor Accident Claims Tribunal, Jhajjar (in short 'the Tribunal'), whereby the compensation of ₹ 5,80,000/- has been awarded along with interest @ 7.5% by fastening the liability upon the Insurance Company, Owner and the Driver.

The question raised at the instance of the Insurance Company in the present appeal as to whether the findings of the Tribunal, fastening the liability upon the Insurance Company, despite the fact that through the testimony of RW-2, Record Clerk, Assistant Regional Transport Office, Mathura, Uttar Pradesh, Driving Licence bearing No.7413/MTR/07 dated 22.05.2007 was issued in the name of Krishan Singh s/o Mangal Singh, is justified or not.

Mr. Vinod Gupta, learned counsel appearing on behalf of the appellant/Insurance Company submits that the owner has not stepped into witness box to depose in terms of the findings rendered by the Hon'ble Supreme Court in "PRTC V/s National Insurance Company Ltd." 2013 (10) SCC 217, to the fact that before employing the driver, he had seen the licence and found it to be genuine. In the absence of such evidence, the liability could not have been fastened. The finding of the Tribunal putting the blame on the Insurance Company that the owner was not negligent in ascertaining is totally against the *ratio decidendi* culled out by judgment cited supra. Despite the cross-examination of the aforementioned witness, nothing surfaced as to whether the licence was actually issued in the name of Sinder Singh or not and therefore, the findings are liable to be modified, viz-a-viz the fastening of the liability.

Mr. Saurabh Garg, learned counsel appearing on behalf of respondent Nos.5 and 6, submits that no doubt the owner had not come into witness box, but on examination of the testimony of RW-2, the file pertaining to the licence of Krishan Singh in whose name, the licence, aforementioned, had been issued, has not seen the light of day, in essence, the Insurance Company has not discharged the onus as enshrined under Section 101 of the Indian Evidence Act and therefore, the findings of the Tribunal cannot be tinkered with.

I have heard the learned counsel for the parties and appraised the paper book.

For appreciating the point noticed above, it would be apt to reproduce the statement of RW-2, which reads as under:-

"I have brought the summoned record of licence

No.7413/MTR/07 dated 25.5.2007 issued in the name of Krishan Singh son of Mangal Singh, resident of Chaura Hatta, Sadar Mathura by our authority. As per our record, the above said licence is not in the name of Sinder son of Gian Singh (respondent No.1). The photocopy of the above said licence is Ex.R2.

XXXX by counsels for the petitioners.

It is wrong to suggest that the above said licence is not valid or genuine.

XXX by counsel for respondents No.1 & 2.

The above said licence is valid upto 2025, I am working on the post of Licencing Clerk since 2007. I have not brought the file of the applicant Krishan Singh of Licence No.7413/MTR/07. I have not brought the receipt of the licencing fees. The records of the licences issued by our authority used to destroy after the expiry period of six months. I have no authority letter for appearing in this case from ARTO Office, Mathura. Volunteered, I was directed orally. It is wrong to suggest that the above said licence is not valid or genuine. It is wrong to suggest that I am deposing falsely."

On going through the aforementioned statement, the existence of the licence produced on record i.e. Ex.R-2, has not been denied, but the fact remains that it has been issued in the name of Sinder Kumar s/o Gyan Singh. It is not a case of the owner that he did not employ Sinder Kumar as driver and the licence has come through the custody of the driver, which has been taken into possession by the Police and a challan, in this regard, under Section 173 Cr.P.C. has also been filed.

In view of the *ratio decidendi* culled out in the judgment cited supra, it is duty of the owner, while employing the driver to fulfill the *prima facie* verification of the licence, which apparently, accordingly to

comprehension, was found to be genuine. Having not taken those steps, the owner has not discharged the onus and therefore, the findings of the Tribunal putting the blame on the Insurance Company are wholly erroneous and not able to sustain and resultantly, the findings are hereby set aside and the liability is fastened upon the owner and the driver, instead of Insurance Company.

The Owner and the Driver are directed to deposit the amount of compensation in favour of the claimants within a period of two months from the date of the receipt of the certified copy of this order, failing which, it entails interest @ 9%.

The Insurance Company in case has deposited the amount and if not disbursed, it shall be entitled to seek the refund and if otherwise, seek the refund of the money through execution..

With the aforesaid observations, the appeal stands allowed.

18.08.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No