IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2851 of 2012
Date of Decision: 10.10.2017

Nirmala Devi ....Appellant

Vs.

Vinod Kumar and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.N.Lohan, Advocate, for the appellant.

Mr.V.K.Garg, Advocate, for the respondent/Insurance Company.

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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellant'), against award dated 28.02.2012, passed by the learned Motor Accident Claims Tribunal, Jind (for short, 'the Tribunal') vide which compensation to the tune of Rs.2,23,000/- was awarded to the claimant-Vinod Kumar on account of injuries suffered by him.

On 23.04.2010, the claimant-Vind Kumar was goint to his village Budha Khera from Jind on motor cycle No.HR-33A-7256. On Parmod Kumar son of Karan Singh alongwith Vishesh son of Ram Dhan met hi8m on Jamni Chowk. They were on motor cycle No.HR-33-B-5326. Then claimant started his journey for village Budha Khera. Parmod was coming after him. At about 7:15 p.m. when he had reached near Bus Stand Rajana Kalan, a tanker being driven by its driver rashly and negligent came from Safidon side and hit his motor cycle. He fell down on mettled road and sustained injuries. Driver of tanker stopped his truck for few minutes and saw the accident. Parmod and Vishesh came there. Claiman was shifted to

General Hospital, Jind by Parmod and Vishesh. Where from he was referred to PGIMS, Rohtak. An FIR No.67 dated 24.04.2010 for the offence under Section 279, 337 IPC, has been registered against driver of offending vehicle No.HR-56-1782 on the statement of Parmod Kumar.

On notice, respondents No.1 and 2 filed joint written statement and stated that no accident had taken place. Respondent No.3 has filed separate written statement taking the plea that claimant/appellant had no cause of action and locus standi to file. He had not come to Court with clean hands. Involvement of Tanker NoHR-56-1782 in alleged accident was totally false and accident had taken place on account of fault on the part of claimant-Vinod Kumar whoch was driving motorcycle No.HR-33A-7256 in rash and negligent manner.

"From the pleadings of the parties, following issues were framed:

1. Whether the accident in question has occurred due to rash and negligent driving of respondent No.1-Sohan while driving tanker bearing registration No.HR-56-1782 in which appellant Vinod Kumar has sustained multiple and grievous injuries as alleged? OPP

2. Whether the petitioner is entitled for compensation and if yes, from whom and to what amount he is entitled to receive? OPP

3 Whether the respondent No.1 the driver was not holding a valid and effective driving licence at the time of alleged accident if so to its effect as alleged? OPR-3

4. Relief"

Parties have not disputed the fact in respect the finding on issued No.1 as RW-2 Sohan Lal, driver/respondent No.1 had deposed in his cross-examination that he was facing trial in FIR No.67 dated 24.04.2010 for the offence under Sections 279, 337, 338 IPC, PS Pillukhera. He admitted that charge was framed against him. His driving licence was taken into possession by police. The insurance policy of the offending vehicle was Ex.R3. Hence, issued No.1 was rightly decided in favour of claimants and the compensation has been assessed as under :

Sr.No.	Heads of compensation	Amount
1	Disability	Rs.60,000/-
2.	Pain and suffering and special diet	Rs.10,000/-
3.	Stay in hospital	Rs.10,000/-
4.	Medical Bills	Rs.1,43,000/-
	Total	Rs.2,23,000/-

The learned Tribunal however examine the driving licence of respondent No. Ex.R4 and held that it was fake and respondent No.2 could not be produced any driving licence on the file. So, it cannot be said that respondent No.2 owner had employed him after examining his driving licence Ex.R4. The Insurance Company was absolved of the liability to pay compensation to the claimant and respondents No.1 and 2 was held liable to make the payment of compensation. Learned counsel for the respondent/insurance company has referred to the question of consideration before this Court whether on the basis of fake licence, insurance company was absolved from the liability to pay the compensation.

This Court in the case of **Oriental Insurance Company Ltd. Vs. Sukhwnder Kaur and others** observed that while examining the Award, the driving licence of vehicle was held to be fake, the driving licence would not be a defence available to the Insurance Company against either the insured or the third party. The insurance company has to prove that insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. In paragraph 10 of the said judgment observed as under:-

> " The award passed by the Tribunal has been challenged only on the ground that it is on the excessive side, whereas, as per ratio of judgment passed in the case of Punam Devi and another vs. Divisional Manager, New India Assurance Co. Ltd., 2004 (3) SCC 386 while relying upon another judgment of Hon'ble the Apex Court in the case of National Insurance Co. Ltd., Chandigarh vs. Nicolleta Rohtagi and others, 2002 (7) SCC 456, it was held that the insurance company cannot challenge quantum of compensation awarded by the Tribunal. The only ground open to insurer is contained in Section 149(2) of the Act. In National Insurance Company Ltd. vs. Swaran Singh and others, 2004 (2) RCR (Civil) 114 (SC), it has been held that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that the driver had no licence was open to the insurer which it failed to discharge.

The Division Bench of this Court in the case of **Oriental Insurance Company Limited Vs. Ashwinder Singh and others 2006(3)RCR (Civil) 120** where, invalid licence possessed by driver and mere absence, fake or invalid driving licence or disqualification of the driver at the relevant time are not in themselves defences available to the insurer against the insured or a third party. In paragraph 5 of the said judgment it has been observed as under:-

> "The argument of the learned Counsel that the onus to

prove forgery of the driving licence or its validity should have been placed on the claimant-respondent or the owner/driver, would not require any detailed consideration firstly because no objection has been raised with regard to the placing of onus nor any argument in that regard was advanced before the Tribunal. Secondly, the onus to prove the plea cannot be said to have been placed on it incorrectly. The appellant-insurance company could have easily summoned the driver and the owner to ascertain the validity of the driving licence. Even before this Court no application for additional evidence has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Therefore, we are not impressed with the argument that the driving licence was forged or invalid. Even otherwise the insurance company cannot avoid its liability especially n view of the law laid down by the Supreme Court in the case of National Insurance Co. Swaran Singh and Ors (2004-1) 136 Ltd.. P.L.R. 510 (S.C.) and Punam Devi v. Divisional Manager, New India Assurance Company Ltd. (2004-2)137 P.L.R. 295 (S.C.). In Swaran Singh's case (supra), the Hon'ble Supreme Court has observed as under:

The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149 has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third party. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regrading use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

It has further been referred the Hon'ble Supreme Court case in **Punam Devi and another Vs. Divisional Manager, New India Assurance Company Ltd. 2004(2) RCR (Civil) 236** wherein, it was held that the insurance company cannot challenge the quantum of compensation awarded by the Tribunal only on the ground the driver of the offending vehicle was having a fake driving licence. In para-II of the this judgment, it has been observed as under:-

> "In National Insurance Co.Ltd. Chandigarh Vs. Nicolletta Rohagi and Ors., [2002] 7 SCC 456, it was held that the insurance company cannot challenge the quantum of compensation awarded by the Tribunal. The only ground open to insurer is contained in Section 149 (2) of the Motor Vehicles Act. In National Insurance Co.Ltd. v. Swaran Singh and Ors, (2004) 1 Scale 180, this Court has held that "mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time." In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that the driver had no licence was open to the insurer which it failed to discharge."

In view of the judgments referred above, the Award of the learned Tribunal is liable to be modified. Hence, the findings of the Award of the learned Tribunal is being modified that Insurance Company will be liable to pay the compensation to the claimants and respondents No.1, 2 and 3 are liable jointly and severally to make the payment of compensation to the claimants.

The claimant was admitted in hospital from 23.04.2010 to 14.05.2010 and he was taken to Sir Ganga Ram Hospital, Rajinder Nagar, New Delhi for treatment of jaws and left eye injuries. Where he was operated upon. He remained admitted there from 21.05.2010 to 25.05.2010.

He also remained admitted there from 14.05.2010 to 17.05.2010. This fact had been proved by Ex.P12 discharge summary. In these days, claimant must have suffered on account of pain and suffering, transportation and required for special diet. He became permanently disabled. He suffered 30% disability. Disability certificate Ex.P2 had been proved by PW3 Dr.Archana. As such, he has been admitted in hospital for the period almost 2 months. In view of the above, the compensation is reassessed as under:

Sr.No.	Heads of compensation	Amount
1	Disability	Rs.60,000/-
2.	Pain and suffering	Rs.20,000/-
3.	Special diet	Rs.20,000/-
4.	Transportation	Rs.10,000/-
5.	Stay in hospital	Rs.10,000/-
6.	Medical bills	Rs.1,43,000/-
	Total	Rs.2,63,000/-
	Enhanced amount of compensation	Rs.2,63,000/- --- Rs.2,23,000/-=Rs.40,000/-

Resultantly, the enhanced amount of compensation of Rs.40,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan *vs.* Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

10.10.2017
anil

Whether speaking/reasoned Yes/No
Whether reportable Yes/No