In the High Court of Punjab and Haryana at Chandigarh

1. **F.A.O No. 2178 of 2013 (O&M)**
Date of Decision: 21.12.2017

Rajesh Singh and another ......Appellants

Versus

Hardeep Singh and another ....Respondents

2. **F.A.O No. 5232 of 2013 (O&M)**

Hardeep Singh ......Appellant

Versus

Rajesh Singh and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vijay Saini, Advocate for
Mr. G.S.Nagra, Advocate
for the appellants (in FAO-2178-2013) and
for respondents No. 1 and 2 (in FAO-5232-2013).

Mr. Rajbir Singh, Advocate
for the appellant (in FAO-5232-2013) and
for respondent No. 1 (in FAO-2178-2013).

Mr. Pradeep Kumar, Advocate
for the insurance company.

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ANITA CHAUDHRY, J

These are two appeals one filed by the owner and driver aggrieved by the liability placed upon them, the other appeal is by the claimant seeking enhancement.

Hardeep Singh had sustained injuries in an accident which occurred on 18.5.2012. He was returning from duty from P.S.City Sunam and was driving home in his Alto Car. His friend Palwinder Singh was with him. At about 5.15 P.M. when they were within the village limits, an oil tanker came from the front side and hit the car by coming to the wrong side. The claimant suffered injuries on his face, shoulder and chest. The car was also damaged. The Tribunal on examination of the evidence held the driver of the tanker to be responsible for the accident. The claim was allowed. The Tribunal had allowed Rs. 2,36,000/- i.e. the amount of the bills and a lump-sum amount of Rs. 20,000/- was allowed for the miscellaneous heads. The claimant had also sought compensation for the disability but the Tribunal had held that it was temporary disability of 15%. On the issue of liability, the Tribunal noted that there was no endorsement on the driving licence as was required under the rules and relying upon ***Nagmani and another versus Singaravelu and another, 2010 ACJ 1912 (Madras HC***), it was held that the driver was driving a hazardous goods vehicle in violation of the terms of the policy and the owner and driver were also responsible to pay the amount.

The submission on behalf of the owner-driver is that the driver had the licence to drive LMV and HTV and the driver was driving a heavy goods vehicle and the tanker was empty and it was not carrying any hazardous goods and the insurance company had not led any evidence that it was full at the time of the accident and the onus should have been placed upon the insurance company and they were not liable to pay the compensation. It was urged that there is no classification in the Act which require any entry on the licence. Reliance was placed upon ***Oriental***

Insurance Co. Ltd. versus Mangare and others 2011(8) R.C.R. (Civil) 3041, ***Kanta Rani and another versus The New India Assurance Company and others FAO No. 389 of 2013 decided on 23.8.2013*** and ***National Insurance Company Limited versus Presiding Officer and another CWP No. 6739 of 2012 decided on 20.12.2012.***

On the other hand the submission on behalf of the insurance company was that there is a statutory requirement under Section 14(2) of the Motor Vehicles Act and Rule 132(5) of the Central Motor Vehicle Rules 1989 enjoins a duty upon the owner to ensure that the driver of the goods carriage carrying dangerous and hazardous goods should hold a licence as per the provisions of Rule 9. The counsel had further submitted that the licensing authority is required to make an endorsement on the driving licence to that effect that the driver was authorized to drive a goods carriage carrying goods of dangerous or hazardous nature and the issue whether it was empty or otherwise was for the driver-owner to plead and prove and this aspect would not be relevant as the vehicle would be used for transporting an oil tanker which is a hazardous and dangerous material and as there was a violation, the Tribunal had rightly placed the burden upon the owner and driver of the offending vehicle, respectively. Reliance was placed upon ***Sita Devi and others versus Shri Ashwani Kumar Mahajan and others 2014(84) RCR (Civil) 28*** and ***Nagmani and another versus Singaravelu and another, 2010 ACJ 1912***.

The submission on behalf of the claimant in his appeal was that the claimant had suffered 15% temporary disability and he had remained in the hospital for 17 days and he had to undergo another operation and no amount had been allowed for pain and suffering or for the attendant.

Responding to this argument, the submission of the insurance company was that the claimant had failed to place on record the MLR and there was no evidence that the claimant had undergone any operation nor any evidence had been led with respect to leave period and it is not known whether the claimant had claimed any amount from his office as he is working with Punjab Police.

Taking up the appeal filed by the owner-driver first. The material available on record shows that the offending vehicle was an oil tanker registered in the name of Satinderjit Singh-appellant. It would be relevant to notice the relevant sections and rules.

Section 14(2) of the Motor Vehicles Act reads as under:-

14. Currency of licences to drive motor vehicles -

(1) X X X X X

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry.

It is clear from bare reading of the proviso under Section 14(2) (9) that in the case of transport vehicles carrying goods which are dangerous or hazardous in nature, the driving license ordinarily issued is not sufficient. Such a driving license requires a further endorsement as to the compliance by the driver and these licenses are effective only for a period of one year and subject to renewal for similar period from time to time thereafter.

In above context, reference has also to be made to Rule 9 and 132 of the Central Motor Vehicle Rules, 1989 which, to the extent relevant, read as under:-

"9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.--

X X X X X

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

X X X X XX

132. Responsibility of the transporter or owner of goods carriage.--

X X X X X

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

X X X X X"

It emerges from the pleadings before the Tribunal, and the evidence adduced during inquiry into the claim petition before it, that the offending vehicle was one which would fall in the category of a transport vehicle meant to carry dangerous or hazardous substances. In these circumstances, the driving licence of the driver deputed to drive such vehicle could not be the one ordinarily issued for purposes of a heavy transport vehicle, as appears to be the case pleaded by the driver and owner of the offending vehicle. There is no material made available to show that the driver had secured the authorisation necessary in terms of Section 14(2) of MV Act, read with rule 9 of Central Motor Vehicle Rules, 1989. The rules as noted above, do not permit such validity in case the driver is to be on duty on a vehicle carrying dangerous or hazardous substances.

I have gone through the authorities referred to by the appellants. None of the judgments referred to by him refer to the provisions contained in Section 14(2) or the Rules of 1989.

A perusal of Rule 9(3) reveals that the licensing authority on receipt of application which is referred to in clause 2 has to make an endorsement on the driving licence and the words used there are "*shall*". When the owner had engaged the driver it was his responsibility to see that the licence had the necessary endorsement. He has failed to discharge his duty/responsibility placed upon a transporter/owner of goods carriage. The Tribunal had rightly exonerated the insurance company since there was a breach of the provisions of the insurance policy. The driving licence could not be accepted as a valid licence. The argument that on that particular journey the oil tanker was empty, would be meaningless. The oil tanker is used for transporting oil and the licence does not show any endorsement. It signifies that the driver did not have a valid and effective licence to drive a goods carriage which was meant for transporting hazardous and dangerous goods. There is no infirmity in the finding recorded by the Tribunal on this aspect.

The appeal filed by the owner and driver fails and is dismissed.

Now coming to the appeal filed by the claimant. Hardeep Singh was 55 years old and was posted as ASI with Punjab Police. He has stated that he had suffered a disability but the disability certificate placed on record shows that it was only 15% and that too temporary in nature. The claimant did not lead any evidence to show that his salary had decreased on account of the disability. The claimant failed to place on record the MLR. He did not even place on record any bill to show that subsequently he had been operated upon. The bills which had been made available by him had already been allowed which included bills for transportation. The appellant had been advised to get a re-assessment after six months. It appears that it was not got done, therefore there was no loss of income. The Tribunal had allowed Rs. 20,000/- for the attendant, special diet and pain and suffering. I would add Rs. 25,000/- more for all those heads and would include loss of salary for 20 days. It is held that the claimant is entitled to Rs. 25,000/- more and it would be payable by the owner-driver with interest @ 6% from the date of filing of this appeal.

The appeal filed by the claimant is partly allowed. The award is modified.

(ANITA CHAUDHRY)
JUDGE

December 21, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes