In the High Court of Punjab and Haryana at Chandigarh

207 **FAO No. 2785 of 2013 (O&M)**
Date of decision: 13.7.2017

Ajaib Singh and another

......appellants

Versus

Oriental Insurance Company and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sanjeev Patiyal, Advocate,
for the appellants.

Ms.Shamsher Kaur, Advocate,
for respondent No.1.

Mr.Bhupinder Kumar, Advocate
for Mr.Vipul Dharmani, Advocate
for respondent No.2.

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Raj Mohan Singh, J.(oral)

This is an appeal filed by the owner and driver of the offending vehicle which was involved in an accident which took place on 1.4.2011 causing death of Dharam Singh.

Claim petition was filed by Manjit Kaur, widow of the deceased. The Motor Accident Claims Tribunal (for short 'the Tribunal) recorded that the accident in question had occurred due to rash and negligent driving of the driver of the offending vehicle under issue No.1. Claimant was held to be legal heir of deceased Dharam Singh under issue No.2. Under issue No.3, the Tribunal held that as per driving licence Ex.RC, driver Gurmit

Singh was only authorised to drive LMV and motorcycle with gear. The licence was not having any endorsement for driving of heavy transport vehicle. In these circumstances, issue No.3 was decided against the driver of the offending vehicle and in favour of the insurance company.

On the basis of aforesaid finding recorded under issue No.3, the Tribunal awarded the compensation in favour of the claimant holding the primary liability of driver of the offending vehicle to pay the assessed compensation to the complainant. The owner of the vehicle was also held vicariously liable to pay the amount in question. The insurer of the vehicle i.e. insurance company was absolved on account of the fact that the driver was not possessing valid driving licence at the time of accident. However, insurance company was directed to pay the compensation at the first instance with a right to recover the same from the owner and driver at a subsequent stage. An amount of ₹ 13,35,000/- was awarded to the claimant with interest from the date of filing of petition till final realisation of the amount from the insurance company. The amount of compensation was ordered to be deposited in the account of the claimant.

Learned counsel for the appellants has submitted that in fact there was misreading of driving licence on record. The driving licence was having a specific endorsement dated

15.12.2008 vide which heavy transport vehicle was added as additional vehicle for which driver was authorised to drive. The document Annexure A-2, i.e. verification report, was sought to be adduced as additional evidence in terms of Order 41 Rule 27 read with Section 151 CPC. Verification of driving licence was done by the District Transport Officer, Patiala and it was recorded that the driver was authorised for driving heavy transport vehicle vide Addition No.PB-11/922/EDL/08-09 dated 16.12.2008 and the driving licence was valid up to 20.4.2013.

Vide order dated 2.2.2016, learned counsel for the insurance company sought time to verify the driving licence of appellant No.2 Gurmit Singh and also the verification report relied upon by the appellant by way of additional evidence. Copies of the driving licence and verification report were handed over to learned counsel for respondent No.1 in Court. Thereafter, necessary verification was done by respondent No.1 and a verification report was filed in the Court, which was taken on record vide order dated 5.10.2016. the verification report submitted by the insurance company also endorsed that the driving licence was renewed vide No. 47520/R/10 (379) dated 21.4.2010 to 20.4.2013 for the vehicles, motorcycle, LMV, HTV in the name of Gurmeet Singh son of Shiam Singh.

During the course of arguments, learned counsel for respondent No.1 admitted the factum of authorisation to drive the heavy transport vehicle by driver Gurmeet Singh in view of verification got done by respondent No.1.

In view of above, it can be safely taken that the vehicle was being driven by the driver of the offending vehicle with valid driving licence at the time of accident, therefore, findings of the Tribunal in respect of giving recovery rights in favour of the insurance company needs to be modified with the findings that the insurance company-respondent No.2 is liable to answer the claim of the claimant along with driver and owner of the vehicle from the date of filing of the petition till final realisation of the amount.

With this modification, this appeal is disposed of.

(RAJ MOHAN SINGH)
JUDGE

July 13, 2017
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Whether reasoned/speaking Yes/No
Whether reportable Yes/No