

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

1. F.A.O No. 3738 of 2013 (O&M)

Bajaj Allianz Gen Insurance Co. Ltd. ...Appellant

Versus

Jitender and ors. ...Respondents

2. F.A.O No. 3739 of 2013 (O&M)

Bajaj Allianz Gen Insurance Co. Ltd. ...Appellant

Versus

Sushila and ors. ...Respondents

Date of decision:- 22.11.2017

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Subhash Goyal, Advocate
for the appellant (s).

None for respondents

RITU BAHRI J.

The present appeal has been preferred by the Insurance Company against the award dated 08.05.2013 passed by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') awarding the compensation to the claimants.

The facts in brief are that on 07.08.2010, injured-Jitender along with Sanjay (deceased) were enroute from Gurgaon to Sohna on a mobilke bearing registration No. HR-26-P-0389 make Classic Bajaj. Sanjay was driving the bike while Jitender was on the pillion. When they reached near Badela ki Khanpur More Indri road, one dumber being driven at a high speed came from Sohna side and hit the motorcycle in question. Jitender

suffered multiple injuries whereas Sanjay died on the spot.

The learned Tribunal after going through the evidence led by the parties, awarded the compensation of Rs.3,21,000 to injured-Jitender and Rs.8,12,000/- to claimants of Sanjay (since deceased). However, Insurance Company were not granted recovery rights.

Learned counsel for the appellant at the very outset contended that the learned Tribunal has erred in law in not granting recovery rights to the appellant, the driver Intiyaz was not holding a valid and proper driving licence at the time of accident and thus, the vehicle was being driven in contravention of the terms and conditions of the policy. Further the driver and owner were ex parte before the learned Tribunal.

Learned counsel submits it stood proved as per Ex R-1 that DL NO. 2835-2004 was fake. The report R-1 is by Licencing Authoirty, Farukabad. As per this report, no such driving licence had been issued in favour of the driver. The owner has not stepped in to witness box to say that the driving licence was checked by him.

Learned counsel submits that the above said report (Ex R1) was sent directly by the Licencing Authoirty, Farukabad to the Tribunal. Thus, this report cannot be discarded only on the ground that no witness from the licensing authority Farrukhabad has been summoned along with relevant record.

Learned counsel has shown the summons issued by the learned Tribunal to the concerned Clerk of Farrukhabad U.P v vide diary No. 776 dated 27.02.2013.

Thus, once the Tribunal issued summons to the concerned Clerk of Farrukhabad U.P and the report has been sent directly to the

Tribunal to the effect that the driving license was not issued by the concerned authority, therefore, the onus was upon the driver and the owner of the offending vehicle to rebut the same but they were proceeded against ex parte.

Since the driver was having not holding the valid driving licence at the time of accident, the award dated 08.05.2013 is modified to the extent that the appellants are hereby granted recovery rights to recover the entire amount of compensation from the driver or owner.

The appeal stands partly allowed to the above extent.

Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal, vide receipt No. 438920 dated 09.10.2012 in the Registry of this Court be returned to them.

22.11.2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No