106.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1635-2016 (O&M)
Date of decision:28.03.2017

RAJ KANWAR @ RAJ KUMAR ... Appellant

Versus

GEETA DEVI AND ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Aditya Sanghi, Advocate,
for the appellant.

Mr. Lalit Garg, Advocate,
for respondent No.2-Insurance Company.

HARI PAL VERMA, J.

The appellant-owner of dumper No.HR-63B-3588 has filed the present appeal against the award dated 01.02.2016 passed by Motor Accident Claims Tribunal, Palwal (for short, 'the Tribunal'), whereby the claim petition filed by the claimant-Geeta Devi (respondent No.1 herein) under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of death of her husband, namely, Krishan Kumar alias Karambir, was allowed and an amount of ₹6,83,000/- was awarded in favour of claimant (wife) and proforma respondents i.e. Sikalwati and Manoj Kumar, who are mother and brother respectively of the deceased (respondents No.3 and 4 herein).

Briefly stated, on 13.12.2013, Krishan Kumar alias Karambir (since deceased) was travelling as pillion rider on a motorcycle bearing registration No.HR-30M-1764, being driven by one Dalbir. Raj Kumar son of Tek Chand was also following them on his motorcycle. When they reached at Gadota turn near Manpasand Dhaba on NH-2 Hodal, a dumber bearing registration No.HR-63B-3588 (offending vehicle), being driven by Pawan Kumar (respondent No.5 herein) in a rash and negligent manner and also at a high speed, came from the side of Kosi and hit the motorcycle of Krishan Kumar alias Karambir (since deceased). As a result thereof, Krishan Kumar alias Karambir fell on the road and sustained multiple and grievous injuries on his person, whereas Dalbir (motorcyclist) fell on the katcha berm of the road and sustained minor injuries. Raj Kumar, who was following the motorcycle being driven by Dalbir, had noted down the registration number of the offending vehicle. Though the driver of the offending vehicle stopped for a while, but thereafter, he fled away from the spot. The injured-Krishan Kumar alias Karambir was shifted to Metro Hospital, Faridabad where he succumbed to the injuries on the same day during the course of treatment. In this regard, an FIR No.493, dated 14.12.2013, under Sections 279 and 304-A of IPC, Police Station Hodal, was got registered at the instance of Raj Kumar-an eyewitness. The claimant pleaded that her husband was 22 years of age at the time of his death. He was earning ₹15,000/- per month by doing agriculture work and milk vending. A sum of ₹1 lakh was spent on his treatment, transportation of his dead body and last rites. Due to his untimely death, the claimant and respondents No.3 and 4 have been deprived of love and affection of the deceased.

The appellant-owner and respondent No.5-driver have filed joint written statement taking preliminary objections as to maintainability, cause of action and locus standi. It was denied that any accident was ever caused by respondent No.5 due to rash and negligent driving of the vehicle in question on the alleged date, time and place. In any case, they were not liable to pay any compensation as the vehicle in question was insured with respondent No.2-Insurance Company. Therefore, liability, if any, is of Insurance Company.

The Insurance Company-respondent No.2 also filed written statement taking preliminary objections as to maintainability, locus standi and on the ground that the respondent No.5-driver was not holding a valid and effective driving licence at the time of accident. On merits, it was submitted that no such accident had ever occurred with the vehicle in question on the alleged date, time and place and a false case was registered against the driver-respondent No.5 in collusion with driver and owner to extract compensation from Insurance Company illegally. In any case, the Insurance Company is not liable to pay compensation as the offending vehicle was being plied in violation of terms and conditions of insurance policy.

The Tribunal held that the death of Krishan Kumar alias Karambir was the result of the injuries sustained by him in the accident which was caused due to rash and negligent driving of the offending vehicle by respondent No.5-Pawan Kumar. Though the claimant pleaded that her husband was earning ₹15,000/- per month by doing agriculture work and milk vending, but in the absence of any cogent and convincing evidence therefore, the Tribunal took the income of the deceased as that of a causal workman at the relevant time i.e. ₹4,500/- per month. In this way, the annul income of the deceased comes to ₹54,000/-. Since the dependents upon the deceased were three in number, the Tribunal applied 1/3rd deduction in view of law laid down by the Hon'ble Supreme Court in ***Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121*** and also rightly applied a multiplier of 18. In this manner, the amount of compensation comes to ₹6,48,000/-. To the said amount of compensation, the Tribunal also added ₹20,000/- towards consortium, ₹10,000/- towards funeral expenses and ₹5,000/- towards loss of estate. Accordingly, the total compensation payable to the claimants was computed to ₹6,83,000/-.

However, while dealing with *inter-se* liability to make the payment of compensation, the Insurance Company raised objection that the driver was not holding a valid and effective driving licence at the time of accident and the vehicle in question was being plied in violation of terms & conditions of insurance policy. Ex.P2 is a photocopy of driving licence bearing No.522/2013/Proff/Godda issued by the Licensing Authority, Godda (Jharkhand). The Tribunal received a report from the said Licensing Authority vide letter No.585 dated 29.10.2015 that the licence (Ex.P2) had been issued by their office on

16.03.2013 in the name of one Murli Kumar Datta and not in the name of Pawan Kumar-respondent No.5. On the basis of aforesaid report, the plea of the Insurance Company was accepted by the Tribunal and held that at the time of accident, respondent No.5-Pawan Kumar was not holding a valid and effective valid driving licence. Therefore, the Tribunal exonerated the Insurance Company from its liability to pay compensation and the liability was fastened upon the owner and driver of the offending vehicle jointly and severally. Accordingly, the Tribunal, vide award dated 01.02.2016, held the owner and driver liable to pay compensation to the claimant as well as respondents No.3 and 4.

Aggrieved against the aforesaid award dated 01.02.2016, the appellant (owner) has filed the present appeal.

Mr. Aditya Sanghi, learned counsel for the appellant-owner has argued that the Tribunal has not considered the whole evidence while deciding the claim petition and has wrongly fastened the joint liability on the appellant-owner as well as the driver of the offending vehicle. Not only the amount of amount is highly excessive, rather the same is contrary to the facts and documents as available on the file. No accident ever occurred due to the negligence of the appellant or the driver employed by him. The appellant has made a specific averment before the Tribunal that the respondent No.5-Pawan Kumar was employed by him as a driver since he was holding a valid and effective driving licence. Before employing the driver, a driving test was conducted to check his driving skills. The Tribunal has relied upon a report submitted by the District Transport Office, but the said report cannot be read into evidence as no such official was examined in support of said report and it is for this reason, the said document was not exhibited by the Insurance Company. Therefore, unless the document is exhibited, the same cannot be read into evidence. Admittedly, the offending vehicle was duly insured and the same stands corroborated by the documentary evidence produced and by the Insurance Company's own admission in the written statement that on the date of the accident i.e. 13.12.2013, the vehicle was insured, for which certificate of insurance was issued by the Insurance Company. Once a certificate of insurance is issued in terms of the provisions of the Act, the insurer has the liability to satisfy the award as per law. There was no breach or violation of any conditions of the insurance policy. Once the owner of the vehicle has taken due diligence and care at the time of employing the driver, in that eventuality, the Insurance Company cannot avoid its liability on the ground of driving licence, and the owner of the vehicle cannot be held liable. In the case in hand, the appellant-owner was not aware that the original licence of respondent No.5-Pawan Kumar was fake and bogus in any manner. Once it is held that the offending vehicle was duly insured, the Insurance Company is liable to pay the compensation. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver with the express or implied mandate to drive it himself, it cannot be said that the insured is guilty of any breach. The Insurance Company has miserably failed to discharge to establish that the driver of the offending vehicle was not holding a valid driving licence at the time of accident as no such document has been produced by the Insurance Company. He has further argued that the appellant-owner is not well educated person and since his younger brother is better educated, he has asked his younger brother to verify the genuineness of the driving licence as well as the competence of the driver. Thus appellant has pleaded that before employing the driver his driving skill was assessed by his younger brother. Reliance has been placed on the judgment of Hon'ble Supreme Court rendered in ***<u>Pepsu Road Transport Corporation Versus National Insurance Company-2013(4) RCR (Civil) 273</u>*** to contend that when an owner of a vehicle employ a driver, the owner has to satisfy that the driver had a valid driving licence and the driver is competent to drive the vehicle which is based on a test drive. At the most, when an owner hires a driver, he has to satisfy that the driver had a valid driving licence and had competency to drive. In any case, the owner is not expected to go to the extent of verifying the genuineness of the driving licence with the licensing authority and despite such due diligence if it is found that the driving licence was not found genuine in such like cases it is the insurer and not the insured will be liable. He has referred to para 8 of the said judgment which reads as under:-

"8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra)[1]. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured

[1] <u>National Insurance Company Limited Versus Swaran Singh (2004) 3 SCC 297</u>

> for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

On the other hand, learned counsel for respondent No.2-Insurance Company has argued that since the driver of the offending vehicle was not holding a valid driving licence, the Insurance Company cannot be held responsible as the insured has committed violation of the terms & conditions of insurance policy. The driving licence held by the driver was found fake at the time of accident. It was the duty of the appellant-owner to verify the licence of the driver before engaging his services. Learned counsel for the respondent No.2-Insurance Company has referred to the judgment in ***<u>Pepsu Road Transport Corporation's case</u>*** (supra) and submits that as the driver was not holding a valid driving licence, the Insurance Company cannot be held liable. He has further argued that the appellant-owner cannot derive any benefit out of said judgment. In that case, the owner has to satisfy 'himself' as to the competence of the driver, but in the case in hand, the appellant-owner has not satisfied 'himself' the competence of the driver, rather as per his statement, his younger brother had verified the genuineness of the driving licence. Therefore, the appellant-owner cannot take benefit of the said judgment. He has also argued that the younger brother of the appellant-owner who verified the competence of the driver has not been examined. Thus, benefit of ***<u>Pepsu Road Transport Corporation's case</u>*** (supra) cannot be extended to the appellant-owner. He has further placed reliance on the judgments of this Court rendered in ***Kuljeet Singh Versus Surinder Kaur and others-2015(4) Punjab Law Reporter 273*** and ***The New India Assurance Company Limited Versus Sube Singh and others-2014(4) RCR (Civil)34***. While referring to ***Kuljeet Singh's case*** (supra), he has argued that when the driver of the offending vehicle had produced the driving licence issued by Regional Transport Authority, Mathura, it could be a prima facie reason to suspect that as to why the licence of a far away place had been produced to which driver had no connection and, therefore, the recovery rights had rightly been given to the Insurance Company.

I have heard learned counsel for the parties.

Sube Singh's case (supra) deals with a situation where the driving licence held by the driver was found fake at the time of accident and the driver was neither the resident of Guwahati from where the original driving licence was issued, nor the resident of Gurgaon from where it was got renewed. Therefore, the subsequent renewal from Gurgaon will not validate the fake licence from retrospective date.

So far as the law referred in ***Kuljeet Singh's case*** (supra), the same is not applicable in the peculiar facts and circumstances of the case as in the case in hand, the owner has taken best possible care in checking the driving licence of the driver through his younger brother who was comparatively well educated than the appellant and did not find any reason to doubt the said licence.

As regards judgment in ***Pepsu Road Transport Corporation's case*** (supra) is concerned, no doubt when owner of the vehicle hires a driver, he is required to check whether the driver possesses a valid driving licence or not?, and for this purpose, he has to satisfy 'himself' as to the competence of the driver. But in the present case, when the appellant-owner has asked his younger brother, who is slightly more educated, to check the driving licence and to see the competence of the driver, it leads to a conclusion that satisfaction of his younger brother, who is living in the same family, construe satisfaction of the owner 'himself'. Therefore, the word 'himself' has to be interpreted in wider connotation. Moreover, this Court, while dealing with similar case in ***M/s Anupurna Rice Mills Bhawanigarh Versus Karamjit Kaur and others in FAO-1453-2004, decided on 11.04.2014***, has held that if the owner had looked into the licence and was under the belief that it was genuine, there was no further requirement for him to cross check the genuineness of the licence with the licensing authority. The relevant para of the judgment reads as under:-

> "The issue of exoneration of liability as contemplated under Section 149 arises only if an owner had been guilty of breach of terms of policy. If the owner had looked into the licence and was under the belief that it was genuine, there was no further requirement for him to cross check the genuineness of the licence with the licensing authority. On the other hand, it shall be the insurer who shall undertake such an exercise when it issues the policy or at any time before the accident to make

such verification and if it had any reason to suspect the genuineness, it is required to call upon the insured to make a verification or share the information about the fake character. This exercise cannot be done only after the liability arises after the accident. This has been so laid down in the decision of the Supreme Court in ***Pepsu Road Transport Corporation Versus National Insurance Company-(2013) 10 SCC 217***. The liability cast on the owner was, therefore, erroneous and is bound to be set aside. The right of recovery as provided cannot be enforced against the appellants and the liability shall be only on the insurer."

In view of above, this Court finds that the appellant-owner has taken all possible care to check the driving licence while engaging the driver. Therefore, the appellant-owner cannot be held liable. Accordingly, the award dated 01.02.2016 passed by the Tribunal is set aside as regard liability of the appellant-owner is concerned. The Insurance Company is held liable to pay the compensation, as appellant-owner has taken required care at the time of engaging the driver to drive the vehicle involved in the accident.

Appeal by the appellant-owner stands allowed.

(HARI PAL VERMA)
JUDGE

28.03.2017
sanjeev

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