IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 54 of 2013 (O&M)
Date of Decision:- 17.2.2017

Oriental Insurance Company Limited ....Appellant

vs.

Rajinder Kumar Sharma and others ....Respondents

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CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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Present:- Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. K.S. Dhillon, Advocate,
for respondents No. 1 to 3.

Mr. Bhoop Singh, Advocate,
for respondents No. 4 and 5.

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DAYA CHAUDHARY, J.

The appellant-Insurance Company has filed the present appeal challenging impugned award dated 12.11.2012 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'The Tribunal') whereby claimants have been awarded compensation of ₹ 14,73,280/- on account of death of Santosh Rani in an accident which took place on 21.12.2010.

Briefly, the facts of the case as made out in the claim petition are that on 21.12.2010, deceased Santosh Rani along with her husband Rajinder Kumar Sharma was going on a scooter bearing registration No. PB-10AQ-6091. At about 9.30 a.m., on reaching near Dharaur, one car came from the backside and hit the scooter, resultant whereupon, the claimant and deceased fell on the road and run over by the offending tanker bearing registration No. PB-11L9846 which came from the opposite side being driven in a rash and negligent manner due to which she died on the spot. FIR No. 152 dated 21.12.2010 under Sections 279 and 304-A IPC was also registered in this regard against the driver of offending vehicle. Claimants i.e. husband and children of deceased, filed a claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') claiming ₹ 20 lacs as compensation averring that deceased was 43 years of age at the time of accident and she has died due to rash and negligent driving of the driver of the offending vehicle which was insured with the appellant-insurance company. She was having monthly income of ₹ 13065/- per month as she was doing the stitching work on contract basis.

On issuance of notice of motion, the claim petition was contested by the respondent-Insurance company, driver and owner of the offending vehicle. A primary objection with regard to maintainability of the claim petition was raised by the insurance company on the ground that the tanker was being plied in violation of terms of insurance policy and there was no valid registration certificate, permit and fitness certificate of the offending vehicle. However, the factum qua age and earning of the deceased were denied for want of knowledge. The following issues were framed by the Tribunal:-

> "1. Whether the accident has occurred due to rash and negligent driving of Tanker bearing No. PB-

11L-9846 by respondent No. 1 ? OPP.

2. Whether the claimants are entitled to claim compensation from the respondents ? OPP.

3. Whether the claim petition is not maintainable ? OPD.

4. Whether the present claim petition is bad for mis-joinder and non-joinder of necessary parties ? OPR-3.

5. Whether the driver i.e. Respondent No. 1 was not having a valid driving licence at the time of alleged accident ? OPR-3.

6. Relief."

Ultimately, vide order dated 12.11.2012, the claim petition was allowed and an amount of ₹ 14,73,280/- was awarded as compensation to the claimants. They were held entitled to 1/3rd share each i.e. to the extent of ₹ 4,91,093/-. Besides said amount, claimant-husband was also awarded ₹ 10,000/- for loss of consortium. The amount qua share of respondent No. 3, namely, Hira Sharma, was ordered to be deposited in the nationalized bank in the shape of FDR till he attains majority. The claimants were also held entitled for interest @ 8% from the date of filing the claim petition till its realisation. The impugned award dated 12.11.2012 passed by the Tribunal is the subject-matter of challenge in the appeal filed by the appellant-insurance company.

Learned counsel for the appellant submits that the offending vehicle, which was registered as a oil tanker as per Exhibit R-5, was not being driven as per the terms and conditions of the insurance policy. The driver of the offending vehicle was not having valid and effective driving licence. Learned counsel also submits that the driving licence was issued for driving motorcycle, LMV and HMV only and for driving oil tanker, the endorsement for driving vehicle carrying hazardous substances is mandatory, whereas, the driving licence did not contain any such endorsement which shows that the driver was not having valid and effective licence at the time of accident. The vehicle was being driven in violation of terms and conditions of the insurance policy. Learned counsel has also made an alternative prayer that the insurance company be given rights of recovery from the driver and owner of the offending vehicle. He has also placed reliance upon a larger Bench judgment of Hon'ble the Apex Court in case **National Insurance Company vs. Paravtheneni and another, 2009 (8) SCC 785.**

Learned counsel for respondents No. 1 to 3 has also opposed the submissions made by learned counsel for the appellant and also submits that the amount of compensation awarded by the Tribunal is based on proper appreciation of evidence and same cannot be said to be on the higher side. He also submits that less amount has been paid for loss of consortium, love and affection.

Similarly, counsel appearing for respondents No. 4 and 5 submits that insurance company cannot disown its liability on the ground that the driver was holding a licence to drive a light motor vehicle only but was driving a heavy vehicle. No where it has been proved on record that the vehicle was being used as commercial vehicle. Learned counsel also submits that it could not be proved on record that there was any hazardous substance in the vehicle. Learned counsel has relied upon a judgment of Hon'ble the Apex Court in case **S. Iyyapan vs. M/s. United India Insurance Company Ltd. And another, 2013 (3) SCC (Cri.) 11,** judgment of Allahabad High Court in the case of **Oriental Insurance Company Ltd. vs. Mangare and others,** 2012 ACJ 2842, judgment of Madras High Court rendered in case of **National Insurance Co. Ltd. vs. K. Ramasamy and others, 2008 ACJ 516,** as well as a judgment of Madhya Pradesh High Court in the case of **Baghelkhand Filling Station and another vs. Brijbhan Prasad and others, 2006 ACJ 2503** in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned award as well as other documents available on the file.

Facts relating to accident and death of Santosh Rani are not disputed. It is also not disputed that the claimants are husband and children of the deceased. As per award dated 12.11.2012 passed by the Tribunal, an amount of ₹ 14,73,280/- has been awarded to three claimants, which has been challenged in the present appeal by the appellant-insurance company by raising various grounds i.e. assessment of income, maintainability of claim petition and also that the driver of the offending vehicle was not having a valid and effective licence at the time of alleged accident as the tanker was being plied in violation of terms and conditions of insurance policy. Regarding accident, FIR Exhibit P-1 was lodged against the driver of the offending tanker under Sections 304-A and 279 IPC. Tanker was owned by Jasbir Singh and same was insured with appellant-Insurance company. The driving licence of driver Mohan Singh was for HMV and it was valid till 25.6.2011. The copy of the driving licence was exhibited as R-4. As per report obtained from the licensing authority, the licence was valid from 26.6.2008 to 25.6.2011. Tanker was insured with the Insurance company vide exhibit R-1. The negligence of the driver of the tanker was proved from the statement of claimant No.1 i.e. husband of the deceased. CW-1 has specifically stated that the accident had taken place due to rash and negligent driving of the driver of the offending vehicle. It has also been proved on record that the deceased was an income tax payee and by considering the income tax returns for the financial years 2009-2010 and 2010-2011, which were Exhibits P-3 and P-4, income of the deceased was assessed as ₹ 13065/- per month. The deceased was 43 years, 7 months and 24 days of age at the time of accident as according to her PSEB Certificate, she was born on 28.4.1967. In view of ratio of judgment rendered in case **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** 2009(3) RCR (Civil) page 77, multiplier of 14 has been applied and total amount of ₹ 14,63,280/- along with ₹ 10,000/- as funeral expenses were paid to the dependents. The tanker was insured with appellant-Insurance company. There was no evidence on record which may establish that the tanker was carrying some hazardous substance. In case, the appellant was of the view that tanker was carrying some hazardous substance then specific plea should have been taken by the appellant under Section 14 of the Act read with Rule 9 of the Rules framed thereunder.

In **Oriental Insurance Co. Ltd vs. Mangare and others,** 2011 (87) ALR 84, the judgment of case **National Insurance Co. Ltd. vs.**

<u>Swaran Singh and others,</u> (2004) 3 SCC 297 of the Apex Court was relied upon wherein it was held as under:-

> "89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub- sectionh (2) of Section 10. They are `goods carriage', `heavy-goods vehicle', `heavy passenger motor-vehicle', `invalid carriage', `light motor-vehicle', `maxi-cab',`medium goods vehicle', `medium passenger motor-vehicle', `motor-cab', `motorcycle', `omnibus', `private service vehicle', `semi-trailer', `tourist vehicle', `tractor', `trailer', and `transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for `motorcycle without gear', for which he has no licence.

> Cases may also arise where a holder of driving licence for `light motor vehicle' is found to be driving a `maxi-cab', `motor-cab' or `omnibus' for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

Admittedly, the driver was holding a licence to drive a tanker. The endorsement neither increases the efficiency of a driver nor decreases in case of its absence. It only authorizes to carry goods of dangerous or hazardous nature. For driving such a vehicle, no further experience of driving is required. This could be said to be a lapse on the part of the driver as well on the part of the appellant but this lapse was not responsible for the cause of any accident. The crux of the matter is that if the driver was not having necessary endorsement as required under the Rules, it cannot be said to be the cause of accident. The endorsement is not required to be given to the driver after having gone through any special training or after having passed any special test. Any driver who is possessing a driving licence to drive a tanker would also be entitled to have this endorsement subject to fulfilling all other conditions as required under the Motor Vehicles Rules/Motor Vehicles Act with regard to professional skill of driving. It has been certified by the licensing authority at the time of granting licence to him that he was entitled to have driving licence on the basis of test and other driving skills. It is not the case of the appellant that his driving licence was not obtained properly.

In view of facts as mentioned above, there is no force in the argument raised by learned counsel for the appellant to the effect that the driver of the offending vehicle was not having valid and effective driving licence. Moreover, keeping in view the age, dependency and other heads, the amount of award cannot be said to be on the higher side. Moreover, it has also been held in various judgments of this Court that in case a person has been given a licence for a particular type of vehicle specified therein, it cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. For example, if a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licences for car as well as jeep separately.

In view of facts as discussed above, it is held that the driver was holding a valid licence. Simply because of the reason that the driver did not get any endorsement on the driving licence to drive the vehicle containing hazardous substance he has committed any error under law.

Accordingly, there is no merit in the contentions raised by learned counsel for the appellant-insurance company and, therefore, the appeal being devoid of any merit is hereby dismissed.

February 17, 2017 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**