IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 224

FAO-5308-2014 (O&M)
Cross Objection No.180-CII-2014
Decided on : 12.07.2017

Ramesh Kumar and another ..... Appellants

VERSUS

Bimla Devi and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.S.S.Khurana, Advocate, for the appellants.

Mr.B.K.Bagri, Advocate, for respondents No.1 to 3-Cross objectors.

Mr.Vishal Aggarwal, Advocate, for respondent No.4.

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DEEPAK SIBAL, J. (ORAL)

Cross Objection No.180-CII-2014

Learned counsel for the cross objectors does not press the cross objections.

Dismissed as not pressed.

FAO-5308-2014 (O&M)

The claimants who are the dependents of Birender Singh @ Virender Singh preferred a petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') before the Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal). As per the claimants on 21.09.2011, Dharmender, Birender Singh @ Virender Singh s/o Raj Kumar and Rattan Lal s/o Rajender Singh, alongwith other passengers, boarded the offending vehicle No.HR-61-A-6598 which was being driven by Ramesh Kumar (appellant No.1 herein) in a rash and negligent manner. Appellant No.1 was requested by the passengers to slow down but he did not pay any heed. When the offending vehicle reached the temple in Village Jadra, while attempting to over take a truck, due to high speed of the offending vehicle appellant No.1-Ramesh Kumar lost control and the offending vehicle turned turtle on the road resulting in serious and grievous injuries to the passengers including Dharmender and Birender Singh @ Virender Singh. Dharmender alongwith other injured was admitted to the Government Hospital Rewari and then Amandeep Hospital, Circular Road, Rewari whereas Birender Singh @ Virender Singh succumbed to his injuries.

On the basis of the pleadings of the parties on 29.03.2012, the Tribunal framed the following issues: -

> *"1. Whether the petitioner Dharmender has received injuries and deceased Birender Singh @ Virender Singh died in a motor vehicular accident occurred on 21.09.2011 on account of rash and negligent driving of vehicle bearing No.HR61A6598 by respondent No.1? OPP*
>
> *2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP*
>
> *3. Whether the respondent No.1 was not holding a valid and effective driving licence to drive the above said vehicle at the time of accident? OPR*
>
> *4. Relief."*

While deciding issue No.1 the Tribunal came to a categoric conclusion that deceased Birender Singh had died in the accident which occurred on 21.09.2011 on account of rash and negligent driving of the offending vehicle by appellant No.1-Ramesh Kumar.

On the issue whether the driver of the offending vehicle was holding a valid and effective driving licence, the Tribunal opined in the positive and after having returned such a finding, the Tribunal was of the view that as per the insurance policy the risk of the passengers was covered and thus, it was the insurance company which would be liable to pay the awarded compensation.

Thereafter the Tribunal went on to determine the quantum of compensation to be paid to the claimants.

After having opined upon the above issues, while deciding so as to what relief the claimants were entitled to, the Tribunal directed that the awarded compensation shall at the first instance be paid to the claimants by the insurance company but because the appellants had failed to produce any route permit, the insurance company was held entitled to recover the compensation to be paid by it to the claimants from the appellants.

The only challenge raised by learned counsel for the appellants in the present appeal is to the finding returned by the Tribunal granting recovery rights to the insurance company. It was submitted that while deciding issue No.2 the Tribunal had specifically opined that it was the insurance company which was liable to pay the awarded claim to the claimants. After doing so, no direction could have been issued by the Tribunal, while deciding the relief clause to give the insurance company the right to recover the compensation to be paid to the claimants from the appellants on the ground that they had failed to produce the route permit as no such issue with regard to holding of any route permit had either been framed by the Tribunal.

Counsel for the insurance company opposed the above challenge on the ground that in the written statement it was the specific case of the insurance company that at the time of the accident the offending vehicle was carrying passengers without any permit and, therefore, the Tribunal has rightly directed that after payment of the awarded amount to the claimants the insurance company would have the right to recover the same from the appellants.

A perusal of the impugned award shows that the issue whether appellant No.1 was holding a valid licence, was decided in favour of appellant No.1 and after doing so, the Tribunal had directed that in view of such finding it will be the insurance company which would be liable to pay the awarded compensation. However, while determining as to what relief the claimants were entitled to, liability was fastened upon the appellants by giving recovery rights against them to the insurance company on the ground that the appellants had not produced any route permit. Neither any issue with regard to the fact whether the appellants were in possession of any valid permit to operate the offending vehicle as a passenger vehicle and that too on the route where the vehicle was plying at the time of the accident, was framed nor any discussion on this issue is found. Thus, the liability has been fastened upon the appellants by the Tribunal without giving them opportunity to lead evidence in that regard. Without framing of any issue as also any discussion on this aspect the impugned finding by the Tribunal could not have been returned as the same, without any manner of doubt, prejudices the rights of the appellants.

The argument of learned counsel for the insurance company that since the insurance company had taken up this issue in its written statement, the Tribunal could have opined on the same without framing any issue in that regard, is an argument which cuts no ice with me. The written statement filed on behalf of the insurance company has been perused where it is found that such an objection had been raised by it but since the appellants were co-defendants with the insurance company they had no opportunity to even file a rejoinder to such an objection taken by the insurance company. Further, merely taking of an objection in the written statement cannot be made the basis of making the appellants liable without an issue having been framed in that regard. It may be noticed here that at the time when the afore-quoted issues were framed which did not contain this issue which was sought to be raised by the insurance company, no challenge was made by the insurance company to get the issue framed with regard to the fact whether the appellants were holding a valid permit to ply the offending vehicle.

In view of the above, only that finding of the Tribunal, while deciding as to what relief is to be granted to the claimants, granting rights to the insurance company to recover the awarded amount from the appellants for not having a route permit, is set aside. The matter is remanded to the Tribunal where the Tribunal would frame a specific issue in that regard and after granting opportunity to the insurance company as also the appellants to lead their evidence, decide the same in accordance with law. Such decision be given within six months from the date of receipt of a certified copy of this order.

In this particular appeal the contest was primarily between the appellants and the insurance company wherein the claimants were unnecessarily dragged. Therefore, the appellants are directed to pay to the claimants Rs.10,000/- as costs. The amount of Rs.25,000/- deposited by the appellants at the time of filing of the appeal is permitted to be withdrawn by the appellants but such withdrawal be permitted by the Registry only after a receipt of the above payment of costs is shown.

12.07.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No