In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 728 of 2013 (O&M)
Date of Decision: 23.10.2017

Rajinder Singh and another ......Appellants

Versus

Roop Singh and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Narender Singh, Advocate
for the appellants.

None for respondent No. 1.

Ms. Vandana Malhotra, Advocate
for M/s Cholamandalam General Insurance Co. Ltd.

Mr. Ram Bilas Gupta, Advocate
for respondents No. 3 and 4.

Mr. D.K.Dogra, Advocate
for United India Insurance Co. Ltd.

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ANITA CHAUDHRY, J

CM-4674-CII-2013

Application is allowed for the reasons stated therein.

Delay of 67 days in filing the appeal is condoned.

FAO-728-2013 (O&M)

Rajinder Singh owner of the truck and his driver Tara Chand have preferred this appeal challenging the recovery rights given to the insurance company.

Few facts are essential. A family consisting of a number of adults and children were proceeding in a Maruti Van driven by Lekh Raj. At 5.15. A.M., when the van reached village Machhgar, the driver noticed that the road was water-logged. The van got stuck in the water and came to a halt. Some of the passengers along with the driver came out of the van in order to push the van as it had got stuck in the mud/water. The allegations are that the offending truck owned by appellant No. 1 and driven by appellant No. 2 came and struck against the stationary Maruti van. Only those people survived who were outside. The rest of the seven occupants died as they were crushed by the truck.

The owner-driver denied the accident and it was pleaded that the vehicle was insured and the driver had a valid licence.

The insurance company took the usual pleas.

The Tribunal calculated the compensation and directed the insurance company to pay the compensation and allowed recovery rights as it was found that the driving licence which was handed over by the driver to the police and issued from Mathura, was fake. A Clerk from the Licensing Authority had brought the record to prove the fact. The Tribunal also noted that the counsel appearing for respondents No. 1 and 2 had tendered another licence which had been issued from Nagaland and noticing that a person could not hold two licences it relied upon the judgment of this Court and held that respondent No. 1 was having a fake licence at the time of the accident and gave the recovery rights to the insurance company.

It is this finding with which the appellants are aggrieved.

I have heard the counsel for the parties at great length and perused the record with their assistance.

The argument raised on behalf of the appellants is that the recovery rights could not have been granted to the insurance company as they had produced a licence which was not got verified by the insurance company and the onus is upon the insurance company and they failed to lead any evidence to prove that the insured was guilty of any negligence. It was urged that the insurance company cannot be absolved of its liability to indemnify the insured on account of an invalid or fake driving licence because there was no evidence from their side. Reliance was placed upon ***New India Assurance Company Ltd. versus Shanti Devi and others 2006(1) R.C.R. (Civil) 664*** and ***Pepsu Road Transport Corporation versus National Insurance Company 2013 AIR (SCW) 6505***.

The submission on the other hand is that the owner did not step into the witness box to say that he had satisfied himself that the driver had a valid driving licence or that he had taken the driving test and the driver himself produced a licence before the police which was verified. It was urged that the driver is not a resident of Nagaland nor he had pleaded this fact in the written statement and was a resident of district Faridabad and when a resident of Faridabad obtains a licence from Nagaland, there are grounds to doubt that the licence is not genuine and the owner cannot be allowed to take shelter of that fact. It was urged that a person cannot have two licences and there is a prohibition under Section 6 of the Motor Vehicles Act. It was urged that the insurance company had examined the Licencing Clerk from Mathura and that evidence had come on record that licence was fake and they tendered another licence and there is no explanation from the driver regarding the licence which he had handed over to the police at the time of his arrest.

The driver is a resident of Faridabad (Haryana). There was no assertion that he had ever resided in Nagaland or he had got any employment at the time of obtaining the licence. The licence which was handed over to the police by the driver himself was issued from Mathura (Uttar Pradesh) which has been found to be fake. Subsequently, the counsel representing both the owner and driver tendered a licence which was issued from Nagaland. The law does not permit a person to hold more than one licence. The fact that the driver had obtained a licence from Nagaland *prima facie* raises a doubt that the licence is not genuine. The entire attempt of the owner and driver is to wriggle out of the liability. There is a categorical finding recorded by the Tribunal which is against the appellants and I find no reason to take a different view. A person cannot hold two licences and the claim of the owner-driver is not *bona fide*.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 23, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes