IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 5101 of 2015 (O&M)
Date of decision : 04.07.2017

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Iqbal Singh

...........Appellant

Versus

Oriental Insurance Company Ltd. and others
...........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. G.C Shahpuri, Advocate for the appellant.

Mr. Suveer Dewan, Advocate for respondent no.1.

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RITU BAHRI, J.

C.M No. 15761-CII of 2015

For the reasons mentioned in the application, delay of 73 days in filing the present appeal is condoned.

C.M is allowed.

FAO No. 5101 of 2015

The appellant Iqbal Singh has filed the present appeal against the award dated 23.1.2015 passed by the Motor Accident Claim tribunal, Yamuna Nagar, whereby in the claim petition bearing MACT Case No. 97 of 2012 filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 for claiming compensation on account of death of Sukhbir Singh, the Oriental Insurance Company Limited (hereinafter referred to as `the insurance company') was firstly directed to pay the entire amount of compensation awarded to the claimants and recovery rights of the entire amount of compensation had been given to the insurance company against the appellant, Iqbal Singh.

Briefly stated, the facts of the case, are that Sukhbir Singh on a motorcycle bearing No. HR-71-A-9017 driven by Ram Kumar with one Bhuru of his village were returning from Khizrabad to his native village Bakarwala. Appellant-Iqbal Singh (respondent no.1 in the claim petition) driving truck No. HR-02GA-0549 in a rash and negligent manner hit the motorcycle from behind. Sukhbir Singh sustained multiple injuries and was brought to Kohli Hospital, Yamuna Nagar from where, he was referred to the Govt. Medical College and Hospital, Sector 32, Chandigarh, where he was declared dead by the doctors. In this regard police registered FIR No.84 dated 13.7.2012 under Sections 279, 337 and 304-A IPC at Police Station Khizrabad against the truck driver Iqbal Singh on the statement of Satbir Singh who was moving on a separate motorcycle behind the victim's motorcycle and had witnessed the accident. Kanwaljeet Singh (respondent no.2 in the claim petition) was the owner of the truck and Oriental Insurance Co. Ltd. (respondent no.3 in the claim petition) was the insurer of the truck.

On notice, Iqbal Singh and Kanwaljeet Singh filed a joint written statement taking the plea that no accident had been caused by the alleged truck due to rash and negligent driving of Iqbal Singh and a false FIR was registered on the date of the accident. Insurance Company admitted that the truck was under its insurance cover on the date of accident but contested the claim petition inter alia on the grounds that the petition has been filed in collusion with Iqbal Singh and Kanwaljeet Singh. Moreover, the accident had occurred as the deceased was riding the motorcycle with two pillion riders and driver of the truck was not holding a valid and effective driving licence. Moreover the deceased was neither of the age nor was earning to the extent as alleged by the claimants and that the claimants had not spent the amount of Rs.1,00,000/- on treatment of the deceased.

On the pleadings of the parties, following issues were framed:

1. Whether Sukhbir Singh son of Jai Singh died in an accident caused by vehicle No. HR-02GA-0549 due to rash and negligent driving of respondent no.1 as alleged? OPP
2. To what amount of compensation and, if any, from whom the claimants are entitled? OPP.
3. Whether the insured has violated the terms and conditions of the insurance policy as alleged. If son, its effect? OPR-3.

Claimants examined PW-1 Usha Rani, the widow of the deceased and PW-2 Bhuru a co-passenger travelling on pillion seat with the deceased on the motorcycle. They also tendered in evidence documents namely post mortem report Ex.P1, charge framing order Ex.P2, copy of police report Ex.P3 filed under Section 173 Cr.P.C., copy of FIR Ex.P4 and copy of jamabandi Ex.P-5.

The only witness examined on behalf of the respondents was truck owner Kanwaljeet Singh RW-1. Iqbal Singh and Kanwal jeet Sjingh tendered documents namely route permit Ex.R-1, driving licence Ex.R-2

(Ex.R-13) of Iqbal Singh, insurance policy Ex.R3, fitness certificate Ex.R-4 copy of registration certificate Ex. R-5, copy of renewed driving licecne Ex.R-14 of Iqbal Singh, copy of driving licence Ex.R-15 of Gurinder Singh son of respondent no.2 and driving licence verification report Ex.R-16 issued by RTA, Yamuna Nagar. Insurance Company did not adduce oral evidence but tendered copy of medico legal report Ex.R6 of Bhura, copy of MLR Ex.R7 of Ram Kumar, copy of intimation letter Ex.R8 sent by the Medical College Hospital, Chandigarh to the police, copy of inquest report Ex.R9 copy of insurance policy Ex.R-10, driving licence verification report Ex.R11 supplied by Licensing Authority, Mokokchung, Nagaland under Right to Information Act, 2005 and original envelope Ex.R-12, in which the licensing Authority had sent the information.

After hearing the submissions made by the counsel for the parties and going through the evidence on record, Tribunal returned a finding that Sukhbir Singh died in the accident caused by truck No. HR-02GA-0549 due to rash and negligent driving of Iqbal Singh. Issue no.1 was, thus, decided in favour of the claimants.

On issue no.2, the income of the deceased was taken as that of a skilled worker in the year 2012 and assessed at ₹ 5487/- per month. In view of the parameters laid down in the case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77***, 50% increase towards future prospects was added to the income of the deceased as he was 30 years of age at the time of the accident. The income of the deceased for calculating compensation was assessed at ₹8231/- (5487+2744) per month. Out of this 1/4th amount i.e ₹ 2058/- per month was deducted towards the personal expenses of the deceased. Therefore, the dependency of the claimants was assessed at ₹ 6173/- per month and ₹ 74,076/- per annum. To this multiplier of 17 was applied and thus the amount of compensation came to ₹ 12,59,292/- . An amount of ₹ 1,00,000/- towards consortium, ₹ 5000 towards loss of estate, ₹ 5000/- towards funeral expenses, ₹ 10,000/- towards litigation expenses and and amount of ₹ 15,000/- was awarded towards medical expenses and transportation charges. Thus, the claimants were held entitled to a total compensation of ₹13,94,292/- payable jointly and severally by the respondents being the driver, registered owner and the insurer of the offending truck.

On issue no.3, the Tribunal examined the driving licence of Iqbal Singh as Ex.R-2. This licence was issued by licensing authority, Mokokchung, Nagaland and as per the report of the Insurance Company Ex.R-11, this license was a bogus document. The owner of the truck further produced licence Ex.R-15 which revealed that his son Gurinder Singh who took the driving test of Iqbal Singh was a holder of licence of LMV-transport vehicle. Though the Licence Ex.R-2 was renewed by the Licensing Authority-cum-RTA, Yamuna Nagar till 12.3.2014 and subsequently it was renewed till 25.4.2017 as is evident from licence Ex.R-14 but renewal of a fake licence cannot make a licence valid if the original licence itself was not a valid and genuine licence. Hence the Tribunal concluded that Iqbal Singh was not having a valid and effective driving licence for driving the offending vehicle. The Tribunal proceeded to accept the report Annexure R-11 and held that after making the payment of compensation, the Insurance Company will be entitled to recover the amount of compensation from Iqbal Singh and accordingly issue no.3 was decided in favour of the Insurance Company.

Feeling dissatisfied with the impugned award, the appellant has preferred the present appeal.

Mr. G.C Shahpuri, counsel for the appellant has vehemently argued that before Iqbal Singh was appointed, son of the owner of the truck in question, Gurinder Singh had taken his driving test. He had taken all precautions before employing Iqbal Singh as driver and thus the Insurance Company cannot escape his liability to pay the compensation. Learned counsel for the appellant has referred to a judgment of the Supreme Court in the case of ***Pepsu Road Transport Corporation vs. National Insurance Company, 2013 (4) RCR (Civil) 273*** to contend that when an owner hires a driver, he had to satisfy that driver had valid driving license and had competence to drive. Owner is not expected to go to the extent of verifying the genuineness of the driving licence with the licensing authority. If such a driver causes accident, then insurer and not the insured will be liable to pay the compensation.

Counsel for respondent no.1 has referred to a judgment passed by the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Kusum Rai and others RCR (Civil) 313***, wherein the driver was having driving licence for light motor vehicle but owner allowed the driver to drive commercial vehicle. Driver caused death of child by negligent driving. The insurance company was held not liable to make payment of compensation. Judgment in ***Kusum Rai and others's case (supra)*** is not applicable to the facts of the present case as in that case, despite of knowing that the driver had the licence of light motor vehicle, the owner of the vehicle allowed him to drive commercial vehicle.

Heard learned counsel for the parties and gone through the case file. Gurinder Singh, son of the owner of the truck in question, had taken the driving test of the appellant Iqbal Singh before employing him to drive the truck which was involved in the accident. Thus the Insurance Company cannot escape his liability to pay the compensation. Secondly, if the licence issued by the Nagaland Government was bogus and thereafter it was renewed by another licensing authority, it would not change the nature of the licence. Except from checking the renewed license and conducting driving test, nothing more was required to be done by the owner before employing Iqbal Singh as the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company required the owner of the vehicle to have 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 license from the licensing authority. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification then the insured will be at fault and in such circumstances, the insurance company is not liable for the compensation.

Hon'ble the Supreme Court in ***Pepsu Road Transport Corporation (supra),*** has observed as under:

> 6. The matter was subsequently considered by a three-Judge Bench of this Court in National Insurance Company Limited vs. Swaran Singh and Others[2]. The said Bench was of the view that in case

the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The relevant discussions are available at paragraphs 92, 99, 100 and 101, which are extracted below:

"92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case, the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever."

"99. So far as the purported conflict in the judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether

> *despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."*
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> *"100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."*
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> *"101. The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."*

Applying the ratio of Supreme Court judgment in the case of ***Pepsu Road Transport Corporation (supra),*** and in the facts and circumstances of the present case**,** present appeal is allowed. Insurance Company is held liable to pay the compensation to the claimants.

04.07.2017 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable No