IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6151 of 2016 (O&M)
Date of decision: 04.12.2017

The Shiv Co-operative Transport Society Ltd. and another
….Appellants
Versus

The Oriental Insurance Company Ltd. and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Jain, Advocate,
for the appellants.

Mr. Suvir Dewan, Advocate,
for respondent No.1-Insurance Company.

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RITU BAHRI J. (Oral)

The Shiv Co-operative Transport Society Ltd. & Sat Pal @ Mintu-appellants (owner and driver of offending vehicle) have come up in appeal against the award dated 08.02.2016 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.17,05,000/- has been awarded in favour of the claimant-respondent Nos.2 to 7 on account of death of Ram Kumar in a motor vehicular accident which took place on 12.02.2015. Respondent Nos.2 to 7 are widow and daughters of deceased-Ram Kumar.

Brief facts of the case are that on 12.02.2015, Ram Kumar (since deceased) was standing near Bus Stand, Naraingarh for going to Chandigarh. In the meantime, a bus (of Route No.38) bearing registration

No. HR-37-D-7722 being driven by Sat Pal (appellant No.2) in a rash and negligent manner, came from the side of Ambala Chowk, Naraingarh and struck against Ram Kumar, as a result of which, Ram Kuma received multiple grievous injuries. He was shifted to General Hospital, Naraingarh, from where he was referred to GMCH, Sector 32, Chandigarh. However, he succumbed to the injuries. With regard to the accident, FIR No.34 dated 13.02.2015, under Sections 279/304-A IPC was registered at Police Station, Naraingarh. Consequently, the claimants (respondent Nos. 2 to 7 herein) filed a claim petition before the Tribunal.

Upon notice, respondent Nos. 1 and 2 (appellants herein) filed a joint written statement, stating therein that no accident, as alleged, had taken place with the offending vehicle and a false FIR was got registered against respondent No.1 by involving the said vehicle in connivance with the police to get compensation. They were not liable to pay compensation because the offending vehicle was insured with insurance company-respondent No.3 (respondent No.1 herein).

Insurance Company-respondent No.1 filed a separate written statement stating that respondent No.1-driver (appellant No.2 herein) was not holding a valid and effective driving licence at the time of accident. The offending vehicle was being driven in violation of the terms and conditions of the insurance policy. All other allegations levelled by the claimants were denied and prayer for dismissal of the claim petition was made.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the accident in question took place by rash and negligent driving of bus bearing registration No. HR-37-D-

7722 by respondent No.1 Sat Pal alias Mintu resulting into death of Ram Kumar, as alleged. OPP

2. If issue No.1 is proved, whether the claimants are entitled for compensation, if so, how much and from whom? OPP
3. Whether respondent No.1 was not having a valid and effective driving licence on the date of accident, if so, its effect?. OPR (3)
4. Whether respondent No.2 has violated the terms and conditions of the Insurance Policy and respondent No.3 is not liable to indemnify respondent No.2? OPR (3)
5. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the deceased had died in a roadside accident which took place on account of rash and negligent driving of offending vehicle (bus No.HR-37-D-7722) by its driver-Sat Pal and thus, returned the finding on issue No.1 in favour of the claimants-respondent Nos. 2 to 7. This finding was rightly given on the basis of deposition of Sudesh Antwal (PW-1), who was an eye witness of the accident and on whose statement, FIR was registered against the driver of offending bus for causing the said accident. Claimants have also proved report under Section 173 Cr.P.C. Ex.P7, charge sheet Ex.P8, postmortem report of deceased Ex.P10 and ruqa sent to the police station as Ex.P11.

In the absence of any documentary proof, income of the deceased was assessed as Rs.8000/- per month i.e. Rs.96,000/- per annum, out of which, $1/4^{th}$ amount was deducted towards personal expenses of the deceased. Dependency of claimants, thus, came to Rs.72,000/- per annum.

Age of the deceased was between 35 to 40 years at the time of death/accident. Accordingly, after applying the multiplier of 15, claimants were found entitled to a compensation of Rs.10,80,000/-. Apart from this, Rs.1,00,000/- were awarded to claimant No.1-widow on account of loss of consortium, Rs.25,000/- on account of funeral expenses and Rs.5,00,000/- to claimant Nos.2 to 5 for loss of love and affection. Ultimately, the claim petition was accepted and a sum of Rs.17,05,000/- was awarded in favour of claimants-respondent Nos.2 to 7.

While allowing the claim petition, Tribunal has given finding on issue No.4 against the owner and driver of the offending vehicle, as they had violated the terms and conditions of the insurance policy. Hence, liability to pay the compensation has been imposed upon the insurance company, however, recovery rights have been given to the latter (insurance company) to recover the same from the owner and driver of the offending vehicle.

Feeling dissatisfied with the impugned award, owner and driver of the offending bus (appellants) have preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file.

The fact of accident is admitted and proved. It stands established that the injured as received injuries as a result of the accident. There is no dispute with regard to finding given on issue No.1 and the calculations made with respect to the income of deceased and other conventional heads. The dispute is only with regard to finding given on issue No.4, whereby insurance company has been absolved of its liability to make payment of compensation. While deciding issue No.4, Tribunal has examined the testimony of Sh. Vijay Kumar, Assistant in the office of RTA, Ambala (RW-1), who deposed that route permit No. 24/ST/2014 in the name of Maan Singh, Shiv Cooperative Transport Society, Village Shakarpura, Tehsil Naraingarh, District Ambala (appellant No.1) was issued on 11.08.2014 on bus No.HR-37-B-0028 and it was valid upto 07.08.2019. Subsequently, he made an application for replacement of bus number HR-37-D-7722 i.e. the offending bus. After depositing the replacement/transfer fee on 21.10.2014, route permit was replaced on bus No.HR-37-D-7722 w.e.f. 12.05.2015. Those documents were proved on record as Ex.R1 and Ex.R2. During cross-examination, RW-1 stated that application for replacement was made on 30.10.2014 and requisite fee was deposited on 25.06.2014. In this regard, receipts were proved as Ex.R7 and Ex.R8.

The Tribunal, after going through the above said evidence, returned a finding that the route permit with respect to the offending vehicle became application only after 12.05.2015 and the accident took place on 12.02.2015. Hence, at the time of accident, the offending bus did not have a valid route permit.

Learned counsel for the appellants has referred to the judgment passed by this Court in ***Gurmeet Singh and another vs. National Insurance Company and others,*** FAO-1800-2012 (decided on 02.04.2014), wherein while relying on the judgment of a Division Bench of this Court in ***United India Insurance Company Limited vs. Subhash Chander and others,*** FAO-3726-2006 (decided on 18.08.2006), it was held that there was no requirement in law to possess a route permit. Reference was made to Section 2 (31) of the Motor Vehicle Act, which talks about "Permit" only. Section 149 of the Act is also silent about route permit. While holding so, the insurance company was directed to indemnify the award.

In the present case, it is not the case of the insurance company that any of the conditions mentioned in Section 149 of the Act has been violated by owner of the offending vehicle. Applying the ratio of the above said judgment on the facts of the present case, even if, application for replacement had not been allowed, in the absence of route permit, the insurance company could not be absolved of its liability to make payment of compensation. Moreover, at the time of filing an application for transfer of route permit, necessary fee had also been deposited by the owner, as is evident from the receipts Ex.R7 and Ex.R8. Since, under Section 149 of the Act, possession of route permit is not mandatory, this appeal deserves to be allowed.

Resultantly, the impugned award is modified and the owner, driver and insurer (insurance company) of the offending vehicle are held liable jointly and severally. Since the offending vehicle (bus) was insured at the time of accident, respondent No.1-insurance company is directed to indemnify the award and it will not have any recovery rights against the insured.

Allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

04.12.2017
ajp

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