

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3194 of 2003 (O&M)

Date of decision: 12.03.2018

Hardip Singh

....Appellant

Versus

Charanjit Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sushil Saini, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate,
for respondent No.6-Insurance Company.

RITU BAHRI J. (Oral)

Hardip Singh-appellant (owner of offending vehicle) has come up in appeal against the award dated 21.01.2003 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.6,22,000/- has been awarded in favour of the claimant-respondent Nos.1 to 3 on account of death of Dharminder Singh in a motor vehicular accident which took place on 15.12.2000. Respondent Nos.1 to 4 are widow, son and parents of deceased-Dharminder Singh.

Brief facts of the case are that on 15.12.2000, Dharminder Singh (since deceased), who was employed as constable in PAP, had come to his village Sooch. On that day, he along with his father-Sadhu Singh and a relative Harwinder Singh, was going to village Harchowal in connection with some domestic work. At about 3.00 P.M., they were waiting for a bus.

Malkiat Singh-respondent No.5 (respondent No.2 in claim petition) in a rash and negligent manner, came from the side of Tughalwal at a very high speed and took a sharp turn for going towards village Beri. All the above said persons jumped towards the fields in order to save themselves. However, Dharminder Singh (since deceased) could not save himself and was crushed under the offending bus, as a result of which, he died at the spot. With regard to the accident, FIR under Sections 304-A/279 IPC was registered against driver-respondent No.5 at Police Station, Kahnuwan. Consequently, the claimant (respondent Nos. 1 to 4 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Dharminder Singh had died in a roadside accident which took place on account of rash and negligent driving of offending bus by its driver-Malkiat Singh and thus, returned the finding on issue No.1 in favour of the claimants-respondent Nos. 1 to 4. This finding was rightly given on the basis of deposition of Sadhu Singh (AW-1), who was an eye witness of the accident and on whose statement, FIR Ex.A5 was registered. Ultimately, the claim petition was accepted and a sum of Rs.6,22,000/- was awarded in favour of claimants.

While allowing the claim petition, Tribunal has given finding against the owner (appellant herein) of offending vehicle that he did not enquire the genuineness of the driving licence of the driver before employing him as a driver and did not act bonafide in compliance with the terms and conditions of the insurance policy Ex.R-3. Therefore, insurance company was held entitled to recover 50% of the amount of compensation from the owner (appellant) as driver was not holding a valid driving licence

at the time of accident.

Feeling dissatisfied with the impugned award, owner of the offending vehicle (appellant) has preferred the present appeal.

Learned counsel for applicant has referred to para No.20 of the impugned award, whereby owner-Hardip Singh (RW-1) had deposed, by way of affidavit Ex.R-1, that Malkiat Singh was employed as driver with his muni bus and he was holding a valid driving licence at the time of driving his bus. He stated that he had checked the driving licence of Malkiat Singh, which was bearing all the signatures and stamps of the issuing and renewing authority and as such, on the fact of it, driving licence appeared to be genuine. Learned counsel for the appellant has argued that this was the abundance caution, which an owner could take while appointing a driver. In this backdrop, the liability of 50% could not have been fixed on the owner (appellant) for making payment of compensation.

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 deceased has died as a result of the accident.

A perusal of the impugned award shows that as per verification report Ex.R-4 issued by the Licensing Authority, Tonk (Rajasthan), driving licence No.NT/25246 dated 04.10.1994 was fake. The owner had taken abundance caution at the time of appointing Malkiat Singh as a driver. It was not one of the conditions in the insurance policy that the insured will verify the driving licence before appointing a driver. This aspect has been considered by Hon'ble the Supreme Court in **Pepsu Road Transport Corporation vs. National Insurance Company Ltd.**, 2013 ACJ 2440 (SC),

whereby certain circumstances have been laid down, in which the insured can be absolved from his liability and the insurance company can be made liable. Hon'ble the Supreme Court held that the insurer's defence that the driver was having fake driving licence at the time of accident was not sufficient to avoid liability. The insurance company has to prove that owner of the vehicle had failed to take reasonable care in employing a qualified and competent driver having valid licence. If he the owner had exercised reasonable care, he need not further verify genuineness of the licence from the licensing authority before appointing the driver.

The ratio of aforesaid judgment is directly applicable to the facts of the present case. In the present case also, the owner (appellant) had checked the driving licence of driver before appointing him driver on the mini bus. Therefore, the finding given by the Tribunal that owner of the offending vehicle was negligence in not checking the driving licence of the driver prior to his appointment, is reversed and the Insurance Company is held liable to pay compensation to the claimants.

Resultantly, the impugned award is modified to the extent that the amount of compensation shall be paid by the Insurance Company-respondent No.6 only and it shall not recover the same from the owner (appellant) of the offending vehicle.

Allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

12.03.2018
ajp

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