IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5201 of 2002
Date of Decision.07.03.2018

United India Insurance Co. Ltd. ......Appellant

Vs

Smarvijay Singh and another ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

None for the respondents.

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AMIT RAWAL J.(ORAL)

The insurance company is in appeal against the award dated 10.08.2002 whereby the claim petition preferred by claimant Samarvijay Singh has been allowed by awarding compensation of ₹25,000/- to be paid by the insurance company along with interest @9% from the date of filing of the claim petition till actual realization.

The claimant preferred the claim petition on the premise that he had suffered injuries in a motor vehicular accident, which took place on 18.2.1999 at about 10.30 AM. When he was coming from Anaj Mandi Bhiwani to Railway Crossing, Bhiwani on motor cycle bearing Chassis No.99A E.C. 3780, which was driven by Nishant as the claimant was a pillion rider, at that time a Bajaj Scooter baring No.HR-16-A-8867 driven by respondent No.1 in a rash and negligent manner hit against their motor cycle, as a result of which the motor cycle fell and the claimant received injuries. An FIR in this regard was also lodged. The age of the claimant was 18 years and he was a student. He used to attend the agricultural work and cattle and claimed to earn ₹5000/- per month.

The insurance company and owner & driver of the offending vehicle contested the claim petition by denying the accident.

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

"*1. Whether the accident in question resulting into injuries to petitioner Samarvijay Singh took place due to rash and negligent driving of Bajaj Scooter No.HR-16-A-8867 by its driver Balbir Singh, respondent No.1? OPP*

2. If issue No.1 is proved to what amount of compensation the petitioner is entitled to and from whom? OPP

3. Whether the respondent No.1 was not holding a valid driving licence at the time of accident in question? OPR

4. Relief."

In order to prove his case, the claimant himself appeared as PW-1, Dr. K.L. Bawa as PW2 and tendered into evidence RLR as Ex.P3 and medical bills. On the other hand, the respondent No.1 appeared as RW1 and tendered into evidence insurance policy Ex.R2 and closed the evidence.

Mr. R.C. Kapoor, learned counsel appearing on behalf of the appellant-insurance company submitted that the driving licence of respondent No.2 was got renewed after the accident as he had no licence at that time, for, accident had taken place on 18.2.1999 whereas the period of licence had expired much before the accident, therefore, as per the provisions of Motor Vehicles Act, there was no licence in the eyes of law, thus, the insurance company was required to be absolved from the liability. Renewal after a the accident would be inconsequential, thus, urged this Court for setting aside the finding on issue No.3 by giving recovery rights.

There is no representation on behalf of the respondent. The appeal is of the year 2002, therefore, I proceeded to dispose of the appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kapoor, as the insurance company has failed to bring on record the driving licence. Only the insurance policy was brought on record as Ex.R2. The onus to prove the invalidity/genuity or existence of the driving licence was heavily upon the insurance company. Once the insurance company has failed to discharge the onus, in my view, the recovery rights cannot be granted.

In view of the aforementioned, I do not find any illegality and perversity in the finding rendered by the Tribunal. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No