

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-462-2000
Date of decision: 11.05.2018

M/s. Oriental Insurance Co. Ltd.

...Appellant

V/s.

Baljinder Kaur and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. B.S. Sidhu, Advocate for
respondents No. 1 to 5.

RITU BAHRI, J. (Oral).

The Insurance Company has come up in appeal against the award dated 04.11.1999 whereby claim petition under Section 163-A of the Motor Vehicles Act, 1988 has been allowed and a compensation of Rs.1,92,000/- has been awarded to the claimants on account of the death of Darshan Singh who died in a road accident which took place on 18.12.1997 when he was driving a truck bearing registration No. RJ-13/0567 belonging to respondent No. 1 Subhash Chander and insured with Oriental Insurance Co. i.e. respondent No. 2.

In the claim petition, the claimants had stated that the deceased was employed as a driver of the truck. On 18.12.1997, deceased Darshan Singh alongwith Jai Pal son of Babu and Gora son of Sukhdev Singh was going to Jalandhar from Raipur (M.P.) on a truck bearing registration No. RJ-13/0567 which was being driven by him, the truck developed some defects and on account of this, the truck turned turtle and he received multiple injuries and died on the spot.

After filing the claim petition, respondent No. 1 Subhash Chander filed written statement and Oriental Insurance Company filed a separate written statement taking the plea that the driver of the truck was not having valid driving license at the time of accident and that he did not comply with the terms and conditions of insurance policy. On merits, it was admitted by the Company that the truck involved in the accident was insured with company from 10.12.1997 to 09.12.1998.

The deceased was 32 years as per the post mortem report Ex. P.2 and was married. Since the accident was not disputed by either of the parties, the compensation was assessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.1500/- per month
(ii)	1/3 rd of (i) above is deducted as personal expenses of the deceased	1500-500=1000
(iii)	Compensation after multiplier of 16 applied	1000 X 12 X 16=192000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs. 1,92,000/-

Hence, the claimants were found entitled to total compensation of Rs.1,92,000/- along with interest @12% per annum from the date of filing of the petition till realization.

Learned counsel for the Insurance Company has challenged the award on two grounds:-

- (i) That the deceased Darshan Singh was not the third party as he was the driver of the vehicle.
- (ii) He had a fake driving license.

A perusal of the record shows that as per the insurance policy (Ex. R2) the owner had paid Rs.90 as premium for the driver and hence the claim petition could not be discarded on the ground that the driver was not a third party. Since the accident had taken place on account of mechanic defects,

the legal heirs rightly held entitled for the compensation as the issue of negligence in a claim petition under Section 163-A is not involved.

The second ground taken is that he was not having valid driving license. As per the deposition of Krishan Kumar, Dealing Assistant, Office of Registering & Licensing Authority, Shimla, there was no driving license bearing No. 35714/13548/24567/SML/1984 issued from his office. He had brought the record of the year 1984 and from the serial no.1 to serial no. 454 on 31.12.1984 no license had been issued in the name of Darshan Singh.

Learned counsel for the claimants has further argued that original driving license has been placed on record as Ex.P5. This driving license has been issued by Licencing Authority, Bhathinda which had been renewed and the original was issued from Shimla. The driving license no. issued from Shimla is mentioned in this driving license. In the present case, even RW1 Krishan Kumar, Dealing Assistant, Office of Registering & Licensing Authority, Shimla, had stated that he had brought record of urban zone only and he had specifically stated that there are other zones in Shimla.

A perusal of the record further shows that the following issues were framed in this case on 24.07.1998 :-

1. *Whether the claimants are the L.Rs. of Darshan Singh deceased. If so its effect? OPA.*
2. *Whether the accident took place on 18-12-97 at 5.30 AM near village Aklera and whether the owner of the vehicle respondent No.1 is liable to pay compensation in case of the death of Darshan Singh driver? OPA.*
3. *If issues No. 1 and 2 are proved to what amount of compensation the claimants are entitled to and from whom? OPA.*
4. *Whether owner of the vehicle was not having valid registration and fitness certificate of the vehicle at the time of accident? OPR*

5. *Whether driver of the vehicle was not holding valid driving licence. If so its effect? OPR*

6. *Relief.”*

On issue No. 4, the onus was on respondent to prove that the driver did not have valid driving license, though the insurance company has produced RW1 Krishan Kumar, Dealing Assistant, Office of Registering & Licensing Authority, Shimla, but this witness had not brought the whole record of Shimla. He had only brought record of urban zone and he had made a statement that this license has not been issued from this zone. Hence, as per the deposition of RW1 Krishan Kumar, this finding cannot be given that license was fake and renewed subsequently by Licencing Authority, Bathinda. The license was valid on the date of accident.

I do not find any ground to interfere in the award and the appeal is dismissed accordingly.

(RITU BAHRI)
JUDGE

May 11, 2018
Divyanshi

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