

FAO No.1330 of 2008(O&M)

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

FAO No.1330 of 2008 (O&M)

Ritu Garg

....Appellant

Versus

United India Insurance and Ors

....Respondents

And

FAO No.2552 of 2008 (O&M)

Surjit Singh (deceased) through his LRs

....Appellants

Versus

United India Insurance Co. and Ors.

....Respondents

Date of Order: 24.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Kotla, Advocate for the appellant
in FAO No.1330 of 2008.

Mr. Ramesh Goyat, Advocate for the appellants in
FAO No.2552 of 2008.

Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate for respondent No.1.

Mr. Sanjeev Kumar Sharma, Advocate for
Mr. Kuldeep Tiwari, Advocate for respondent Nos.2 to 7.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two
appeals arising out of similar claim petition since common questions of law
and facts are involved in the same.

Present appeals have been filed by the owner and LRs of
deceased Driver (Surjit Singh) against the award dated 17.7.2006 passed by
the Motor Accident Claims Tribunal, Kaithal (for short "the Tribunal")
whereby recovery rights have been granted to the Insurance Company.

Facts in brief are that in road accident occurred on 25.7.2004,

one Tej Pal son of Ghissa Ram, who was going from Dumara village side to his village Kalayat on his car No.HYU-8675, was hit by truck No.HR-39-B-1871 being driven by respondent No.1-driver, resulting into his death. His Lrs/claimants filed petition claiming compensation to the tune of Rs.15 lacs.

Respondent No.2 was proceeded against ex parte by the Tribunal on 16.8.2005.

The claim petition was contested by respondent No.1 by objecting that the claimants did have any locus standi to file the petition for want of cause of action much less had not approached Tribunal with clean hands.

The Tribunal on the pleadings of the parties framed the following issues:

- “1. Whether the accident resulting to the death of Tej Pal son of Ghissa Ram took place on 25.7.2004 at about 10 P.M in the area of village Bata due to rash and negligent driving of truck No.HR-39-B 1871 by respondent No.1?OPP*
- 2. Whether the claimants are entitled to compensation, if so to what amount and from whom?OPP*
- 3. Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy?OPR*
- 4. Relief.”*

The onus to prove the driving licence (Ex.R.1) of respondent No.1-Surjit Singh qua genuineness was upon the Insurance Company and in order to establish the same, Insurance Company produced Rajinder Kumar, Driving Licence Clerk from the office of S.D.M Hissar as RW1. He

brought the summoned record relating to Licence No.69404 in the name of Surjit Singh son of Parbhu Dayal resident of village Khariya Tehsil and District Hisar and stated that the said licence was issued on 26.3.1993, which was valid upto 05.3.1998 and thereafter the same was renewed upto 14.5.2003. It was stated that the licence was valid for LMV only.

The Tribunal on the basis of evidence on record held that respondent No.1 was not holding valid licence from the date of the accident and gave recovery rights to the Insurance Company.

This Court on 15.9.2017 had sought the report from the Tribunal, for, appellants moved an application for bringing on record additional evidence i.e copy of driving licence, recovery memo and report of driving licence with regard to genuineness of licence which had been submitted as per report dated 07.12.2017 observing that the licence was renewed on 23.5.2003 to 14.5.2006 whereas the accident had taken place on 25.7.2004, therefore, it was valid and effective one bearing endorsement for HTV. The operative part of the report reads as under:

“16. According to respondent No.1 on 25.7.2004 he was holding a valid and effective licence to drive heavy vehicle. In this regard he refers to statement of RW-2 and copy of licence Ex.RW2/A. He stated that it was renewed by RTA Hissar on 23.5.2003 upto 14.5.2006. It was again renewed on 24.8.2009 upto 23.8.2012. This accident had taken place on 25.7.2004. So, on that date he was eligible to drive heavy vehicle.

17. He further submits that endorsement by RTA is made only if licence is sought for heavy vehicles. In such situation, he says he was having valid and effective driving licence on that day.

18. It has been objected by opposite counsel. He

submits that as per RW-2 he was allowed to drive transport vehicles. A transport vehicles can be light or heavy. He does not say that it was issued for heavy vehicle. So, he was not holding a licence to drive heavy vehicle.

19. Admittedly this licence was earlier issued by SDM to respondent No.1 to drive L.M.V. It was valid upto 14.5.2003. But RW-2 stated that it was renewed on 23.5.2003 to 14.5.2006 by RTA Hissar. It is a known fact that RTA always issues licence for HTV. Accident had taken place on 25.7.2004. So, on that date respondent No.1 was holding a valid and effective driving licence. Issue is therefore decided in favour of respondent No.1 and against respondent No.3.”

The aforesaid report has not been disputed by learned counsel for the respondent-Insurance Company.

In view of aforesaid, the present appeals are accepted and the award dated 17.7.2006 passed by the Tribunal is modified to the extent that the findings recorded by the Tribunal qua recovery rights being granted to the Insurance Company are set aside. It will be the sole liability of the Insurance Company to indemnify the claimants.

May 24, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No