IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.113 of 2011
Date of Decision: 14.05.2018

M/s Punjab Container Service ....Appellant

Vs.

Charanjit Kumar and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Satinder Khanna, Advocate, for the appellant.

Mr.Pardeep Goyal, Advocate, for respondent/Insurance Company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the owner-appellant (for short 'the appellant'), against award dated 15.05.2010, passed by the learned Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal') vide which compensation to the tune of Rs.3,70,000/- was awarded to the claimant-Charanjit Kumar on account of injury suffered by him in a motor vehicular accident wherein, recovery rights have been given to the Insurance Company from the appellants.

FACTS NOT IN DISPUTE

On 14.09.2008, the claimant and Budh Ram were sitting on rickshaw near Parkash Auto Center and they were waiting for passengers. At the same time, the offending Tralla bearing No.PB-13J-1718 being driven by respondent No.1 came from Atam park Road without blowing horn rashly and negligently and hit the rickshaw on which the claimant and Budh Ram were sitting. As a result of that the tralla run over both the legs of Charanjit Kumar and his both legs were fractured. Budh Ram received multiple injuries on his head and other parts of the body and he died in the Civil Hospital, Ludhiana. The tralla driver stopped the tralla dn he came out from the tralla and he hold his name as Gurbaksh Singh son of Sh.Balwant Singh. The claimant was admitted in CMC And Hospital Ludhiana on 14.09.2008. A case bearing FIR No. 244 dated 15.09.2008 (Ex.P1) for the offence under Sections 279, 338, 427, 304-A IPC was got registered with P.S.Division No.5 on the statement of Ashok Kumar on of Sh.Milkhi Ram who is the eye witness of the accident.

The claimant himself appeared as PW-1 and reiterated the version given in FIR (Ex.P1) with regard to the accident took place on 14.09.2008. Before the Tribunal, Driver did not put in appearance and after framing of charges, driver was facing a trial and learned Tribunal was informed by RW1 Hans Kumar, Ahlmad in the Court of Shri J.P.S.Wahniwal, ACJM, Ludhiana who was brought the record to show that after registration of the FIR, driver was facing trial and it was fixed for prosecution evidence3 on 21.02.2010.

After returned to the findings on issued No.1 in favour of claimant, learned MACT has granted compensation total of Rs.3,70,000/- and decided the issue No.2 in favour of claimant. Finally, on issue No.3, the learned Tribunal has held that with regard to liability to make payment of compensation. On this issue, as per report given by the Insurance Investigator Ex.R4 driving licence issued by Regional Transport Authority Bombay and driving license was issued to Mr.Iondal Sukhram Jaiswar and it was not issued Gurbaksh Singh son of Balwant Singh by the RTO Office, Bombay. As such, this issued was decided in favour of respondent No.3 and against respondents No.1 and 2.

Learned counsel for the appellant has argued that in evidence their partner had appeared as RW1 Anil Khosla who was a partner of M/s Punjab Container Services , Jalandhar, had admitted in his cross-examination that he has not verified the driving licence of the Gurubaksh Singh, issued from the licencing authority Bombay at the time of appointing respondent No.1 as driver. He further argued that Gurbax Singh was appointed after taking his test of driving. After going through the records Ex.RA, the affidavit of RW1 Anil Khosla, in the examination-in-chief this witness has deposed that he was partner of the firm and he employed Gurbax Singh after taking his test of driving and he every time drove the vehicle as a perfect driver and since, his driving licence was issued by RTO , Bombay, after seeing and believing the same is genuine and employed Sh.Gurbax Singh.

Learned counsel for the appellants/owner has referred to the judgment of the Hon'ble Supreme Court in the case of <u>National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114</u> and <u>Lal Chand Vs. Oriental Insurance Company Limited 2006(4) RCR (Civil) 204</u> on the proposition even if the driver has fake and invalid driving licence or disqualification of law are not defence available to the insurer against insured or third party right under Section 149(2)(ii) of the Motor Vehicles Act. 1988. Even if the defence is taken the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time. The sub para III of para 10 of the <u>National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114</u>, it has been held as under:

> "..
>
> (iii) The breach of policy condition i.e. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (1)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

A reference can be made to the judgments in the cases of National Assurance Compaly Limited and others Vs. Makhan Singh and others 2006 ACJ 2523 and Sant Baba Labh Singh Vs. Santo, and United India Insurance Company Limited Vs. Shanti Devi, passed in FAO No.764 of 1997, it has been held that owner of the vehicle can only verify the driving licence of the driver by seeing stamp of Regional Transport authority on the licence and owner has no other means to verify the genuineness of the licence.

A reference can be made to the judgment of Bajaj Allanz General Insuracne Company Limited Vs. Mahesh Kumar and others passed in FAO N.93 of 2010 wherein, in paragraphs of 9 and 10 it has been held as under:

> **9.**This contention of the learned counsel for the appellant cannot be accepted, as it was for the Insurance Company to prove the report, in absence thereof it was inadmissible in

evidence. Once the appellant had failed to discharge the onus, the learned Tribunal was justified in deciding issue No.3 against the appellant.

10. This view finds support from the judgment of this Court in Jasbir Kaur Vs. Om Parkash and others, 2007(1) R.C.R. (Civil) 347, wherein this Court was pleased to lay down as under: -

"4. I have given my holistic view to the aforesaid rival contentions raised on behalf of the parties and have also gone through the above cited rulings and find no force in the aforesaid plea raised on behalf of respondent No.4, i.e. National Insurance Company Limited, inasmuch as the report Ex. R-3, relied upon by the Insurer, cannot be said to have been proved in the eyes of law. In fact, in order to prove the said report, it was incumbent upon the Insurer to summon the concerned official, with relevant records, from the office of the Licensing Authority, Hyderabad. Simply, by placing and marking of the exhibit on the file does not dispense with the proof of the document. In this regard, paragraph 7 of the judgment rendered in Santosh and others' case (supra) is relevant, which is reproduced below: -

"7. It is not being disputed that during the proceedings before the Tribunal no officer or other employee of the Licensing Authority, Delhi had been examined as a witness. Only a certificate Exh. R-4 from the Licensing Authority had been produced in the form of a report. It is a settled principle of law that mere marking of the exhibit does not dispense with the proof of the document. The Supreme Court in the case of Sait Tarajee Khimchand v. Yelamarti Satyam, AIR 1971 SC 1865, had considered the said question and held that mere marking of an exhibit does not dispense with the proof of a document...."

Thus, in view of the observations made by their Lordships and in the given facts and circumstances of this case, the finding of the learned Tribunal pertaining to absolving of the respondent-National Insurance Company Limited, from making payment of the amount of compensation awarded in this case, is hereby set-aside."

Keeping in view the above and in the present case, since the partner of the appellant/Company had appeared at RW-1 and specifically stated that he had taken the test of Gurbax Singh before employing him and since his driving licence which has been issued by RTO, Mumbai, he cannot be held to be negligent in appointing respondent No.1 as a driver and Insurance Company cannot be absolved from the liability to make payment of compensation and there is no breach of condition of the Insurance Policy. As such, with the aforesaid observations, appeal is allowed and finding with regard to recovery rights given to the Insurance Company to recover the amount of compensation from the driver and owner is set aside and driver, owner and Insruance Company are held liable to make payment of compensation jointly and severally.

(RITU BAHRI)
JUDGE

14.05.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No