IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.622 of 2011
Date of Decision: 15.05.2018

M/s Vinus Industrial Gases Pvt. Ltd. ....Appellant

Vs.

United India Insurance Company Ltd. And others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.S.Longia, Advocate, for the appellant.

Mr.Tejender K.Joshi, Advocate for respondent No.1/Insurance Company.

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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the owner of the offending vehicle(for short 'the appellant'), against award dated 04.09.2010, passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') vide which the claimants have been awarded compensation to the tune of Rs.46,368/- on account of injuries sustained by the claimant in a motor vehicular accident.

Parties are not in dispute that the findings on issued No.1 that the accident took place on account of rash and negligence of driver i.e. Satpal Saini-respondent No.1 herein as DDR No.40 dated 09.02.2007 recorded in the statement of the claimant.

Satpal Saini, respondent No.1 (in claim petition) was driver on the offending Canter bearing No.HR58-1192, which was owned by appellant/M/s Vinus Industrial Gases Pt. Ltd. Umri, through its proprietor Sushil Kumar Gupta, respondent No.2 which reveals from the copy of RC as

Ex.R1 and was insured with the United India Insurance Company, respondent at the time of accident.

Learned Tribunal has given recovery rights to the respondent/Insurance Company to recover the amount of compensation i.e. Rs.46,368/- from the driver and owner on the ground that driving licence of the driver of the offending vehicle was found to be fake.

Learned counsel for the appellant/owner has referred to the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114 and Lal Chand Vs. Oriental Insurance Company Limited 2006(4) RCR (Civil) 204 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 National Insurance Company Limited Vs. Swaran Singh and Others, 2004(2) R.C.R.(Civil) 114, it has been held as under:

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> (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 has also been made by the judgment of the Hon'ble Supreme Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company 2013(4) RLW 3237, wherein, it has been held that when an owner hires a driver he had to satisfy that driver had valid driving licence. The owner cannot go to extent of verifying the genuineness of the driving licence with the licencing authority. If such a driver causes accident, then Insurer and not the insured will be liable.

In these circumstances, the appeal is allowed finding of the learned Tribunal with regard to recovery rights given to the Insurance Company is set aside. The respondent/Insurance Company is liable to pay the compensation to the claimant and, hence, there can be no recovery of the compensation if, already paid to the claimants.

(RITU BAHRI)
JUDGE

15.05.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No