IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2070-2013 (O&M)
Judgement reserved on: 05.07.2018
Date of Decision: 01.12.2018

Rashpal Chand & another --Appellants

Versus

Sumit Garg & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Jagjit Singh Chatrath, Advocate for the appellants.

Mr. Chandan Deep Singh, Advocate for respondent no.3.

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TEJINDER SINGH DHINDSA.J (Oral)

Claimants/appellants have filed the instant appeal assailing the decision dated 4.1.2013 of the M.A.C.T, Mansa and in terms of which their claim petition filed under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs.50 lakhs on account of death of their son Vinod Kumar in a motor vehicle accident which took place on 18.2.2012, has been dismissed.

Brief facts of the case are that the claim petition had been filed on the averments that on 18.2.2012 at about 10/10.30 P.M Vinod Kumar (since deceased) along with Sumit Garg, Manoj Kumar and Bhupesh Kumar were going from Moga to Dabwali in a Skoda car no. PB-03X (Temp.)-7708. Car was being driven by Sumit Garg and was under the ownership of Ashwani Kumar (respondent no.2 before the M.A.C.T). It was asserted that when the car reached near village Jassi Bagwali and while passing a truck-trailer, Sumit Garg lost control over the car due to the blinking of headlight beam of an oncoming vehicle and due to which the car struck against the backside of the truck-trailer. Claimants contended that Sumit Garg was driving the car in a rash and negligent manner and at a very high speed.

Their son Vinod Kumar was sitting on the front side besides the driver and suffered serious injuries in the accident. He was first taken to Omax Hospital, Bathinda. On 19.2.2012 Vinod Kumar was referred to D.M.C. Hospital, Ludhiana but he succumbed to his injuries on 23.2.2012. Claimants asserted that Vinod Kumar was only 30 years old at the time of his death, was able bodied and enjoying good health. After completion of his studies he had joined the banking profession with the ICICI Bank and was posted at Panipat as a Special Junior Officer. A compensation amount of Rs.50 lakhs was claimed. Upon notice having been issued, the claim petition was contested in terms of a written statement having been filed by respondents no.1 and 2 before the Tribunal i.e. the driver and owner of the Skoda car. It was stated in the written statement that there was no negligence on the part of Sumit Garg. Furthermore, car in question was insured with the respondent no.3-Insurance Company. Insurance Company contested the claim petition taking a stand that the car was being plied in violation of the provisions of the Motor Vehicles Act. The car had been purchased on 13.1.2012 and the accident had taken place on 18.2.2012 and was not having a valid registration certificate on such date.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

> *"1. Whether Vinod Kumar died in a motor vehicle accident caused by respondent no.1 by driving Skoda Car No.PB-03X(Temp.)-7708 in a rash and negligent manner?OPR*
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> *2. Whether petition is bad for non-joinder of necessary parties?OPR*
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> *3. Whether the car was being driven at the time of accident in violation of terms and conditions of insurance policy?OPR-3*

4. Whether at the time of accident, the car was being driven by Vinod Kumar since deceased?OPR-3

5. Whether the claimants are entitled to compensation, if so, to what extent and from whom?OPP.

6. Relief."

As has been noticed herein above, claim petition was dismissed by the Tribunal vide impugned decision dated 4.1.2013.

Learned counsel representing the appellants has argued that the Tribunal has erred in taking the view that the Insurance Company is not liable to pay compensation on the plea that the vehicle was not registered. It is urged that the Insurance Company could have been absolved of its liability only if there had been any violation of the terms of the Insurance Policy. Further contended that even if the compensation liability cannot be fastened upon the Insurance Company, the owner and driver ought to have been made liable. Counsel has further argued that the driver Sumit Garg had admitted the factum of accident before the Tribunal and had also explained that the same occurred due to sudden flicking of the headlight beams of an oncoming vehicle during the night hours and as such, the factum of accident as also negligence stood duly proved.

Per contra, counsel representing the respondent-Insurance Company has supported the impugned decision of the Tribunal and prays for dismissal of the appeal.

I have heard counsel for the parties and have also perused the records of the case that had been requisitioned.

It is a settled proposition of law that rash and negligent driving of the vehicle in question has to be proved for maintaining a petition under Section 166 of the Motor Vehicles Act. In the present case DDR No.12 dated 23.2.2012 had been recorded on the statement of Manoj Kumar.

Claimants themselves had relied upon statement of Manoj Kumar Ex.P-8 and in which he had stated in clear terms that the accident had occurred by chance due to blinking of headlights and on account of which the vehicle/car had hit behind the truck-trailer. He had stated in his statement Ex. P-8 that nobody was at fault. Manoj Kumar was an occupant of the car/vehicle in question and is none other than the real brother of Vinod Kumar (deceased). Such statement cannot, as such, be discarded.

Claimants/appellants examined another occupant of the car namely Bhupesh Kumar, PW-3 and who tendered his affidavit Ex. PW3/A. As per evidence of PW-3 Bhupesh Kumar the accident had taken place on account of rash and negligent driving of the car at the hands of Sumit Garg. However, Bhupesh Kumar, PW-3 stated in his cross-examination that his statement had not been recorded by the police. He at no stage had moved any application to any authority as regards the inaction of the police authorities. Sumit Garg, driver of the alleged offending vehicle has stepped into witness box as RW-1 and has categorically denied with regard to the assertion of his negligent driving of the car.

The finding recorded by the Tribunal with regard to rash and negligent driving of the driver of the car having not been proved, is well founded and based on due appreciation of evidence adduced on record.

It is the admitted position of fact that the car in question had been purchased on 13.1.2012 and that the accident had taken place on 18.2.2012. The temporary registration mark assigned to the car was valid for a period of 30 days only and stood expired on the date of the accident. As per treasury challan mark RA produced by Insurance Company, a sum of Rs.22,000/- had been deposited in the Treasury by the owner of the vehicle only on 12.3.2012 i.e. on a date subsequent to the accident.

Section 39 of the Motor Vehicles Act reads as under:-

> *"**39. Necessity for registration**.-No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or canceled and the vehicle carried a registration mark displayed in the prescribed manner:*
>
> *Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."*

The section afore reproduced prohibits the driving of a motor vehicle in any public place or any other place without registering the same under the provisions of the Act. A Coordinate Bench of this Court in ***Taranjit Kaur Vs. Subhash Chand and others, 2015, ACJ, 550*** had clearly held that in a situation where the vehicle was being driven without a valid registration mark, the Tribunal would be justified in exonerating the Insurance Company from the liability.

The Apex Court in ***Narinder Singh Vs. New India Assurance Company Ltd. & Ors., IV (2014) CPJ (SC)*** had considered the scope of Section 39 as also Section 43 of the Motor Vehicles Act and had held as follows:-

> *"13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one*

month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

Following the dictum laid down in the judgements afore noticed, this Court does not find any infirmity in the impugned decision of the Tribunal holding the Insurance Company to be not liable.

For the reasons recorded above, there is no merit in the appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

01.12.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No