IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3784 of 2014 (O&M)
Date of decision: 17.01.2018

Satbir Singh ...Appellant

Versus

Oriental Insurance Co. Ltd. and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Chirag Wadhwa, Advocate
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for the insurance company.

Appeal qua respondents No.2 to 5 dismissed
vide order dated 29.05.2014.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 02.03.2010 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been awarded in regard to death of Ramesh Chander in a motor vehicular accident that took place on 06.08.2007 due to rash and negligent driving of motorcycle No.HR-05-Q-9681 by Satbir Singh (the appellant-owner).

Counsel for the appellant has pointed out that the appeal has been preferred to assail findings of the Tribunal on issue No.3 whereby it has been held that the appellant was not possessing valid licence at the time of accident on the basis whereof, insurance company has been left at liberty to recover compensation from the insured after payment to the claimants. Counsel for the appellant has submitted that the Tribunal has committed a grave error by holding that the appellant was not possessing a valid licence. It is argued that the Tribunal failed to appreciate testimony of Ram Kishan, Clerk from the Licensing Authority, Tohana RW2 who has proved that licence bearing No.53921 dated 15.01.1999 was issued in the name of Satbir Singh son of Dharam Singh for motorcycle, scooter, car, jeep, tractor and produced on record photocopy of document Ex.R5. It is further argued that as the aforesaid licence was not issued by Licensing Authority, Karnal, Charanjit, Clerk from Licensing Authority, Karnal had rightly stated that the aforesaid licence was not issued by the said authority. It is further argued that Ram Kishan RW2 has also deposed that licence issued in the name of Satbir Singh was valid from 15.01.1999 to 01.09.2026, meaning thereby that Satbir Singh was possessing a valid licence to drive the motorcycle on the day of occurrence.

Counsel representing the insurance company has supported findings of the Tribunal with the plea that insurance company has rightly been given recovery right against the insured.

Be that as it may, Ram Kishan RW2 a Clerk from Licensing Authority, Tohana was examined in respect of driving licence No.53921 dated 15.01.1999. Perusal of testimony of Ram Kishan leaves no manner of doubt that Satbir Singh was issued the aforesaid licence by Licensing

Authority, Tohana for motorcycle, scooter, car, jeep valid from 15.01.1999 to 01.09.2026. The Tribunal failed to take into consideration testimony of RW2 and wrongly placed reliance upon testimony of RW3 to record its conclusion that Satbir Singh was not holding a valid licence. In view of the above, testimony of Ram Kishan based upon record coupled with document Ex.R5 produced by the witness, it can be safely held that Satbir Singh was possessing a valid licence authorising him to drive the motorcycle in question on the day of accident. That being so, findings of the Tribunal on issue No.3 are erroneous and liable to be set aside. As the driver was possessing a valid licence, the insurance company shall be jointly and severally liable to pay compensation to the claimants without any right of recovery.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only. Statutory amount of Rs.25,000/- be remitted to the Tribunal.

Before parting with this order, it is pertinent to mention that counsel for the appellant would state that in compliance of order dated 19.09.2016 passed by this Court, appellant has deposited 50% amount claimed in the execution subject to final outcome of the appeal. It is prayed that the said amount may be refunded to the appellant as the insurance company is liable to indemnify the appellant/insured of the vehicle. Counsel for the claimants is not in a position to make the picture clear as to whether amount deposited by the appellant has been disbursed to the claimants or still lying deposited. Under the circumstances, appellant is left at liberty to seek refund of the deposited amount in case the same has not been disbursed to the claimants. However, in case the amount is released in favour of the claimants, the appellant would be at liberty to effect recovery from the insurance company by filing an application before the Tribunal.

17.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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