IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2428-2016 (O&M)
Date of decision: 27.09.2018

OM PAL ... Appellant

Versus

MUKESH AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vivek Khatri, Advocate
for the appellant.

Mr. Narender Kaajla, Advocate
for respondent No.1.

Mr. Kuldeep Chaudhary, Advocate for
Mr. S.K. Verma, Advocate
for respondent No.2.

Ms. Vandana Malhotra, Advocate
for respondent No.3.

****

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 22.03.2016 whereby compensation has been allowed on account of injuries sustained by Mukesh in a motor vehicular accident that took place on 08.04.2013.

Om Pal, owner of offending vehicle i.e. truck bearing No.HR-39/2881 has filed the appeal to assail findings of the Tribunal on issue No.3 on the basis whereof the insurance company has been exonerated of liability to pay compensation. It is argued that even if Jai Bhagwan, driver of the offending vehicle was not holding a valid licence on the day of occurrence, insurance company cannot escape liability to pay compensation to the claimant.

Another submission made by counsel is that Om Pal appeared in the witness box and stated on oath that when he employed Jai Bhagwan as driver on the truck in question he had seen his licence, therefore, the appellant cannot be held guilty of violating the terms and conditions of the policy constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Pepsu Road Transport Corporation Vs. National Insurance Company, 2013(4) RCR (Civil) 273** and **Prem Kumari and others Vs. Prahald Dev and others, 2008(1) RCR (Civil) 835.** Further reference has been made to judgments of this Court **National Insurance Co. Ltd. Vs. Balvir Kaur widow of Nirmal Singh and others, 2013(4) RCR (Civil) 440, Gian Singh and another Vs. United India Insurance Co. Ltd. and others, 2013(4) PLR 603, Libra Bus Service (P) Ltd., Malerkotla Vs. Pushpa Devi and others, 2010(5) RCR (Civil) 616, Sant Baba Labh Singh Vs. Santto, 2008(3) RCR (Civil) 210, New India Assurance Co. Ltd. Vs. Gurvinder Kaur and others, 2006(2) RCR (Civil) 125** and judgment of Himachal Pradesh High Court **Naresh Kumar Vs. Ram Dass and others, 2011 ACJ 1611.**

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal exonerating insurance company of liability to pay compensation. It is argued that Laxmendra Kumar, Clerk, ARTO office, Mathura RW1 was examined and he has proved that licence No.4929/MTR/06 was issued in the name of Neeraj Singh son of Humm Singh resident of Sahpur Jatav Mathura and is valid from 02.05.06 to 01.05.26 for motorcycle/LMV. It is further argued that Om Pal (appellant herein) appeared in the witness box but his testimony with regard to his having seen the licence at the time of employment of the driver is beyond pleadings and cannot be considered. It is further argued that testimony of Om Pal, particularly the facts broughtforth in his cross examination, would not entitle him to derive any advantage to his contention from the judgment in **Pepsu Road Transport Corporation's case (supra)**.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, there cannot be any dispute about settled position in law that even if driver of the offending vehicle is not holding a valid licence, insurance company cannot escape liability to pay compensation to the claimants. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004 ACJ 1** and **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.**

This brings the Court to testimonies of Laxmendra Kumar RW1 and Om Pal RW2. Laxmendra Kumar RW1, a witness from the office of ARTO, Mathura has proved that DL No.4929/MTR/06 was issued in the name of Neeraj Singh son of Humm Singh. Om Pal, registered owner of the vehicle stepped into the witness box and tendered into evidence his affidavit Ex.RW2/A, by way of examination in chief. A relevant extract from para 3 of the affidavit, reads as follows:-

> *"That the respondent No.1 was employed as driver by the appellant on the abovesaid vehicle. The appellant had seen the driving licence of respondent No.1. The respondent No.1 also assured that there, no case or challan is pending against him. The respondent No.1 was having valid and effective driving licence."*

The statement is conspicuously silent as to the date, month or year when the appellant engaged services of Jai Bhagwan and had seen the driving licence. In his cross examination, he would state that he cannot tell the date, month or year of employment of Jai Bhagwan. Voluntarily stated that he was employed 2-3 years ago. The statement of the witness was recorded on 06.01.2016. In absence of his taking a plea in the reply or proving on record that Jai Bhagwan was employed by him prior to the year 2011, the appellant cannot derive any advantage to his contention from the referred authorities in order to say that he has not violated the terms and conditions of policy. Perusal of licence Ex.R1 would reveal that with regard to transport endorsement, it was valid from 28.08.2008 to 27.08.2011. Indisputably, the truck in question is a transport vehicle. Had the appellant seen the licence at the time of employment of Jai Bhagwan sometime in the year 2013, he would have immediately noticed that authority of Jai Bhagwan to drive a transport vehicle stood expired on 27.08.2011. In this view of the matter, testimony of Om Pal is not at all sufficient to contend that he is not guilty of violating terms and conditions of the insurance policy. As such, he cannot derive advantage from the judgment in **Pepsu Road Transport Corporation's case (supra)**. In the given scenario, the insurance company shall have right of recovery against the insured after payment of compensation to the claimant and the same can be enforced by filing an application before the Tribunal.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

27.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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