IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-674-2013(O&M)
Date of decision:-18.12.2018

Future Generali India Insurance Co.Ltd.

...Appellant

Versus

Smt.Sunita and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajan Bhargava, Advocate for
Mr.Vishal Aggarwal, Advocate
for the appellant.

Mr.Shiva Khurmi, Advocate
for respondents No.2 and 3.

****

H.S. MADAAN, J.

Briefly stated, the facts of the case are that claimant Smt.Sunita wife of Sh.Pardeep, aged about 32 years, resident of Lakhuwas Ki Dhani, Tehsil Sohna, District Gurgaon, on 2.3.2010 along with some other passengers had boarded a auto rickshaw (three-wheeler) bearing registration No.HR-74-1835 (hereinafter referred to as the offending vehicle) from Ambedkar Chowk, bye-pass, Sohna for going to village Lakhuwas; the said three-wheeler was being driven by respondent No.1 – Hamid Khan in a rash and negligent manner, resultantly it turned turtle in the area of village Lakhuwas at about 4:00 p.m.; the claimant and other persons travelling in the offending vehicle suffered injuries; the claimant Sunita had suffered multiple injuries on various parts of the body including left arm, right wrist, left leg, left shoulder and multiple fracture in both the hands; that she was removed to Vardan Hospital & Trauma Centre, Sohna, where she was medically treated; she remained admitted as indoor patient from 2.3.2010 to 6.3.2010 and was operated upon there; that an iron rod was inserted in her right hand while plate has been inserted in her left hand. According to the claimant due to suffering injuries in the road side accident, she has become permanently disabled since she is unable to pursue her agricultural work or the domestic chores; that prior to the incident, she used to take agricultural land on batai and was engaged in avocation of selling milk having kept two buffaloes, in that way she was earning Rs.10,000/- per month. According to the claimant, she is having school going children and there is no body to look after them; that she had spent more than Rs.1,00,000/- on her medical treatment, which include cost of medicines, special diet, transportation etc. According to the claimant, an FIR No.73 dated 2.3.2010 was lodged against respondent No.1 – Hamid Khan for causing the accident.

The claimant had filed a claim petition against respondent No.1 – Hamid Khan(driver), respondent No.2 Jafruddin (owner) and respondent No.3 – Future Generali India Insurance Company Limited through its Manager (insurer) of the offending vehicle claiming compensation to the tune of Rs.5 lacs.

On notice, the respondents appeared. Respondents No.1 and 2 have filed a joint written reply, whereas respondent No.3 has filed separate written reply. In the joint reply filed on behalf of respondents No.1 and 2, they controverted the assertions in the claim petition denying that any such accident had taken place in which the petitioner/claimant suffered injuries. According to them, a false case has been got registered against respondent No.1 to extract money from the answering respondents. It is however submitted that respondent No.1 possessed a valid driving licence and vehicle in question was fully insured with Future Generali India Insurance Company Ltd. at the time of alleged accident. Such respondents prayed for dismissal of the claim petition.

In the written reply submitted on behalf of respondent No.3 – Insurance Company, it has taken legal objections to the effect that petition has been filed by the petitioner in contravention of the provisions of Motor Vehicles Act and she has no locus standi and no cause of action arose to her to do so; that the statutory information as provided under Section 134(c) of the Motor Vehicles Act, 1988 has not been given to the insurance company; that since respondent No.1 was not possessing valid and effective driving licence at the time of alleged accident, in that way respondent No.3 – Insurance Company is absolved of its liability to indemnify the insured. In the end, such respondent prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident took place due to rash and negligent driving of three wheeler No.HR-74-1835? OPP.
2. If issue No.1 is proved whether the petitioner is entitled to any compensation on account of injuries sustained by the petitioner in the accident and if so how much and from whom? OPP.

3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident and respondent has violated the terms and conditions of insurance policy? OPR(2).
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of her case, the claimant has examined herself as PW1, Devender Jain, Recordkeeper, Vardan Hospital, Sohna as PW2, Sh.Sanjay Kumar, Ahlmad as PW3 and Dr.Parveen Yadav, Vardan Hospital, Sohna as PW4.

On the other hand, the respondents have examined RW Jagruddin as RW1.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioner, issue No.2 in favour of petitioner, issue No.3 against respondent No.3, as a result, the petitioner/claimant was awarded compensation of Rs.1,00,000/- with interest at the rate of Rs.7.5% per annum from the date of filing of the petition, payable by respondent No.1 to 3 jointly and severally, however observing that Future Generali India Insurance Company – respondent No.3 would indemnify the insured and pay the entire compensation amount to the claimant.

This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents No.2 and 3, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The limited question to be determined in this case is whether respondent no. 1 was having a valid driving licence to drive transport vehicle at the time of accident. The Tribunal had stuck issue no. 3 in that regard to the effect:

> *"Whether respondent no. 1 was not holding a valid and effective driving licence at the time of accident and respondent has already violated the terms and conditions of the insurance policy?OPR(2)".*

This issue was decided against the respondent-Insurance Company holding that the driving licence of respondent no. 1 issued to him on 25.9.2001 was valid up to 3.8.2014 in terms of which he was authorized to drive motor cycle with gear and light motor vehicle. The Tribunal had observed that though Auto Rickshaw does not come within definition of light motor vehicle but then referred to Apex Court judgment ***National Insurance Company Vs. Swaran Singh-2004(2) RCR (Civil) 114*** wherein it was observed that the breach of policy condition have to be proved to have been committed by the insured for avoiding liability, by the insurer. It was further observed by the Tribunal that owner of the vehicle had taken care of the fact of driver possessing a valid driving licence which was valid.

Learned counsel for the appellant – insurance company has argued that the respondent No.1 was driving a three wheeler for commercial purpose, which was used as a transport vehicle without respondent No.1 having a valid driving licence to drive it; that respondent No.1 was holding a driving licence authorizing him to drive light motor vehicle (non-transport), therefore, terms and conditions of the insurance policy were violated and appellant – insurance company could not held liable to pay compensation.

Whereas learned counsel for the respondents No.2 and 3 controverted these submissions stating that the Apex Court has clarified the law on the subject in authority ***Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017(4) RCR(Civil)111*** wherein it was observed as under :-

> *"Section 10(2) (a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carried goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no*

licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that drive ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and drive would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us."

Learned counsel for the appellant could not distinguish this authority at any point or cite any other judgment where a contrary view might have been taken.

Under the circumstances, the point to be determined has to be answered against the appellant. Resultantly, doing so, the appeal is found to be without any merit and is dismissed accordingly.

18.12.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No