IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4354-2015(O&M)
Date of decision:-14.12.2018

National Insurance Co.Ltd.

...Appellant

Versus

Sulakhan Singh and others

...Respondents

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

Present: Mr.Vipul Sharma, Advocate and
Mr.Paul S. Saini, Advocate
for the appellant.

Mr.Arnav Sood, Advocate
for respondents No.3 and 4.

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H.S. MADAAN, J.

Briefly stated, the facts of the case are that Jitender Bains @ Lovely son of claimants Sh.Sulakhan Singh (father) and Smt.Jagir Kaur (mother) on 9.4.2012 was coming home from his school by pillion riding motorcycle make Enfield having registration No.PB-24A-0883 being driven by his friend Bhawan Singh; at about 10:30 a.m. when the motorcycle reached near the memorial gate of 108 Sant Baba Mangal Singh and was to go towards the main road Mahilpur-Phagwara, then a truck bearing registration No.PB07B-5177 (hereinafter referred to as 'offending vehicle') being driven by respondent No.1 – Inderjit Singh in a rash and negligent manner without blowing horn came from Mahilpur side and struck against the motorcycle, resultantly, both the riders received multiple injuries and Jitender Bains @ Lovely succumbed to the injuries at the spot itself; an FIR No.18 dated 9.4.2012 for the offences under Sections 279, 337, 427, 304-A IPC was registered regarding the incident against respondent No.1 – Inderjit Singh.

The parents of the deceased Jitender Bains @ Lovely i.e. his father - Sh.Sulakhan Singh and mother - Smt.Jagir Kaur had filed a claim petition under Section 166 of the Motor Vehicles Act on account of death of their son Jitender Bains @ Lovely in the motor vehicular accident. In the said petition, they impleaded Inderjit Singh – driver, Jasbir Singh – owner and National Insurance Company Limited, Hoshiarpur through its Divisional Manager – insurer of the vehicle as respondents. In the said petition, they contended that the deceased was aged about 17 years and was a student of 10+2 class at Khalsa Senior Secondary School, Paldi and compensation on account of his death in the motor vehicular accident involving the offending vehicle be granted to them payable by the respondents.

On notice, the respondents appeared. Respondents No.1 and 2 filed a joint reply denying that any such accident as alleged in the claim petition involving the truck in question took place. According to them, a false FIR was registered against respondent No.1. In alternative, they took up a plea that if at all the accident had taken place, the same had occurred on account of rash and negligent driving of the driver of the motorcycle. Refuting the remaining assertions, such respondents prayed for dismissal of the petition.

In the written reply filed by respondent No.3 - National

Insurance Company Ltd., it took various legal objections, on merits contending that respondent No.1 – Inderjit Singh – driver was not having a valid driving licence at the time of accident and the petition has been filed by the claimants in collusion with respondents No.1 and 2. The contentions in the claim petition were denied contending that the alleged accident took place due to rash and negligent driving of driver of the motorcycle. Such respondent also craved for dismissal of the claim petition.

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

1. Whether the deceased Jatinder Bains alias Lovely had died in a roadside accident which took place on 9.4.2012 due to rash and negligent driving of respondent no.1 while driving the offending vehicle bearing no.PB07B-5177?OPA.
2. Whether the claimants are legal heirs/dependents of the deceased? OPA.
3. Whether the claimants are entitled to receive compensation, if so, to what extent and from which of the respondents? OPA.
4. Whether the respondent no.1 was not having any proper and valid driving licence at the time of alleged accident? OPR-3.
5. Relief.

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

In support of their case, the claimants have examined PW1 Sulakhan Singh. On the other hand, respondent No.3 tendered in evidence insurance policy as Ex.RA.

After hearing arguments, the claim petition was disposed of by the Tribunal vide Award dated 17.7.2013. The respondent No.3 – Insurance Company was not satisfied with the said award and it challenged the said award by way of filing of an appeal before this Court. The said appeal bearing FAO No.5019 of 2013(O&M) was decided on 23.12.2014 and the same was accepted. Findings with regard to issue No.4 was set aside and the case was remanded back to the Tribunal with the direction to afford at least two effective opportunities to the Insurance Company to adduce and conclude its evidence that too by securing the presence of the witnesses already summoned by it and thereafter, an equal opportunity be also afforded to respondents No.3 and 4 and then to deliver fresh finding and conclusion.

After the case was received by the Tribunal as a result of remand by this Court, the necessary direction was complied with and a fresh award was passed on 4.5.2015, in terms of which the Tribunal gave findings on issue No.4 only observing that the award originally passed had been found to be not sustainable qua issue No.4 only and an appeal had been accepted, resultantly setting aside finding on issue No.4. Therefore, the Tribunal gave findings on issue No.4. Resultantly, the Tribunal awarded a sum of Rs.2,62,000/- to the claimants with interest @ 6% per annum from the date of filing of the claim petition till realization of the award amount. The liability of respondents to pay this amount being joint and several. The awarded amount was to be apportioned equally between the claimants. It was observed that since the offending vehicle was insured with respondent No.3, such respondent No.3 was directed to make the payment of the awarded amount within a period of two months, failing which, the claimants would be entitled to the interest @ 9% per annum from the date of passing of this award till the realization of the award amount.

Such award left the Insurance Company aggrieved and it has again knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents No.3 and 4 i.e. owner and driver of the offending vehicle, who put in appearance through counsel.

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

The main contentions of learned counsel for the appellant are that the driving licence of respondent No.1 – truck driver was not genuine, rather a fake document; that the subsequent renewals shall not result in it being treated as a genuine document, it being so, there was clear violation of terms and conditions of the insurance policy. As such, the insurance company is not liable to pay compensation to the claimants on behalf of respondent No.2 – insured. In support of his such contentions, learned counsel for the appellants pressed into service various authorities.

The first authority referred to by him happened to be ***Oriental Insurance Co. Limited Versus Prithvi Raj, 2008(1) RCR(Civil)851*** by the Apex Court, wherein it was observed that a fake driving licence renewed by Licensing Authority, it would remain fake and renewal cannot take away effect of fake licence and transform a fake licence as genuine. As such, the insurance company was not liable to pay compensation.

The next authority referred to by learned counsel for the appellant was ***National Insurance Co.Ltd. Versus Laxmi Narain Dhut, 2007(1) Recent Apex Judgments (R.A.J.) 956*** is to the similar effect. Similar is the ratio of authority ***New India Assurance Co. Versus Kamla, 2001(3) RCR(Civil)716*** by the Apex Court.

On the other hand, learned counsel for the contesting respondents contended that such argument advanced by learned counsel for the appellant is devoid of any merit; that respondent No.1 possessed a legal and valid driving licence, which was renewed from time to time; that there is nothing on record to show that such driving licence was not genuine, as such, it cannot be termed as a fake document and the Tribunal considering the facts and circumstances of the case, the evidence adduced by the parties rightly came to the conclusion that the licence was not fake, as such the authorities referred to by learned counsel for the appellant are not helpful to the appellants in any manner and the insurance company was not absolved of his liability to pay compensation.

After hearing learned counsel for the parties and going through the record, I find that the insurance company has failed to establish that the respondent No.1 was not having any proper and valid driving licence at the time of the accident.

To prove this issue No.4, the insurance company had examined RW1 Tarlok Singh, Jr.Assistant DTO Office, Hoshiarpur and

RW2 Bhag Singh, Licence Clerk, Registration and Licensing Authority, Una and thereafter counsel for the insurance company had closed its evidence. In rebuttal Jasbir Singh – respondent No.2 – owner of the truck had appeared as RW3, whereas Inderjit Singh – respondent No.1-driver had got his statement recorded as RW4. The Tribunal has properly appreciated the evidence adduced by both the parties on this issue.

RW1 Tarlok Singh, Jr.Assistant DTO Office, Hoshiarpur on the basis of record brought by him had deposed regarding of driving licence bearing No.4647-R dated 4.7.2011 of Inderjit Singh – respondent No.1 having been renewed by their office from time to time proving photocopies of the relevant papers in that regard as Ex.R2 to Ex.R6.

RW2 Bhag Singh, Licence Clerk, Registration and Licensing Authority, Una had brought the the summoned record relating to driving licence in question for the year 1993-94. Though he stated that no licence bearing No.3837/R-1993-94 was issued in the name of Inderjit Singh and that as per record of 1993-94, licenses bearing Sr.No.1 to 700 were issued. However, in his cross-examination, he had stated that he had brought he record for the year 1993-94 regarding driving licence from Sr.No.1 to 700 and he was not aware whether there was any further record regarding issuance of driving licence from Sr.No.700 onwards. He had stated that he had not brought any record from which it could be established that as to how many total driving licneses were issued in the year 1993-94. He had stated that separate registers had been maintained for renewing the driving licence relating to other States as well as their home State.

Respondent Jasbir Singh appearing as RW3 had furnished his affidavit Ex.RW3/A in which he has contended that when he had employed Inderjit Singh as driver on his truck, his licence was got verified by him from DTO Office, Hoshiarpur from where it was renewed a number of times and even at the time of employment, he has had tested his driving skills and verified issuance of the licence from the office of DTO Hoshiarpur and it was earlier told to him that Inderjit Singh was driving the vehicle at Una, got prepared and renewed the licence from Una, record of which is not available. In his cross-examination he stated that he had employed Inderjit Singh as a driver on his truck and had taken his test of driving on the truck of somebody.

Inderjit Singh – respondent No.1 appearing as RW4 stated that he had got issued the driving licence from DTO Office, Una in the year 1991 and thereafter got it renewed from DTO Office, Una; that as per the version of RW1 Tarlok Singh, his driving licence has been renewed by their office from time to time.

Learned counsel for the respondents had argued that since Jasbir Singh owner of the truck has categorically stated that while employing Inderjit Singh as a driver on his truck, he has tested his driving skills by making him drive truck of some other person and had examined his driving licence also satisfying himself that driver had licence. Even if the licence is found to be not genuine that does not absolve the insurance company of its liability. In view of such contention, learned counsel for the respondents has referred to authority ***Lal Chand Versus Oriental Insurance Co. Ltd., 2006(4) RCR(Civil)204*** by the Apex Court wherein it was observed that when the driver possessed driving competency, but his driving licence was fake, then the liability to pay compensation is that of insurance company and not the owner of the vehicle. It was observed that to avoid liability towards insured, insurance company has to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling condition of policy regarding driving of vehicle by duly licensed driver and in absence thereof fake or invalid driving licence or disqualification of driver are not defences available to insurer against insured or third parties.

The Tribunal has observed that it is normal routine of the DTO Office that if any driving licence is received by them for renewal purpose, it used to send the information to the office from where the licence has been originally issued thereby asking for any objection regarding renewal and if no information is received, then driving licence is renewed and in this case also, the DTO Office, Hoshiarpur renewed the licence of Inderjit Singh after adopting the due procedure and as no objection has been received from DTO Office, Una, therefore, renewed licence has been duly issued by the DTO Office, Hoshiarpur. As such, it cannot be said that respondent No.1 was not having any valid and effective driving licence at the time of accident. The Tribunal had observed that respondent No.3 Insurance company did not bother to summon the record pertaining to driving licence after the Sr.No.700 onwards to prove that driving licence of driver was invalid/fake. Therefore, the insurance company had failed to discharge onus of proving this issue.

Learned counsel for the respondents has drawn my attention to Section 15 of the Motor Vehicles Act, 1988, which deals with renewal of driving licence. Sub-Section 6 of this Section provides that where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence. That means that in that way, the authority at Una would have come to know about the renewal of the licence, which as per case of the insurance company was fake, it being so the authority renewing driving licence could be informed that as a matter of fact no such licence has been issued and renewal had been obtained wrongly. But that was not to be.

The finding recorded by the Tribunal is well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award for such like reason. No other illegality or infirmity in the award could be pointed out by the learned counsel for the appellant.

Finding no merit in the appeal, the same stands dismissed accordingly.

14.12.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No