In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:19.4.2018

FAO No. 4696 of 2015(O&M)

Mohinder Singh

---Appellant

vs.

Charanjit Kaur and others

---Respondents

FAO No. 9721 of 2014

The Oriental Insurance Company Limited

---Appellant

vs.

Charanjit Kaur and others

---Respondents

FAO No. 9988 of 2014

Cargo Motors Pvt. Ltd.

---Appellant

vs.

Charanjit Kaur and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.Vijay Lath, Advocate
for the appellant in FAO-4696 of 2015
for respondent No. 5 in FAO- 9988 and 9721 of 2014
Mr. R.K.Bashamboo, Advocate
for the insurance company in all the appeals
Mr. Arun K.Bakshi, Advocate
for the appellant in FAO- 9988 of 2014
for respondent No. 6 in FAO-4696 of 2015
and FAO-9721 of 2014
Mr. Vipin Mahajan, Advocate
for respondents No. 1 to 3 in all the appeals

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Rekha Mittal, J.

This order will dispose of FAO Nos. 9721, 9988 of 2014 and No.4696 of 2015 as these have emerged out of the same award dated 5.8.2014 passed by the Motor Accidents Claims Tribunal, Gurdaspur whereby compensation has been awarded on account of death of Amarjit Singh in a motor vehicular accident that took place on 7.11.2012 due to rash and negligent driving of Indica car No.HR-51-M-2963 by Jagjit Singh, its driver.

FAO No. 9721 of 2014 has been filed by the Oriental Insurance Company Limited (hereinafter to be referred as "the insurance company"), FAO No. 9988 of 2014 by M/s Cargo Motors Private Limited, alleged purchaser of the offending vehicle from its registered owner Mohinder Singh and No. 4696 of 2015 by Mohinder Singh, registered owner of the vehicle in question.

Counsel for the insurance company would inform that the appeal has been preferred on the question of driving licence and entitlement of the insurance company to be exonerated of its liability to pay compensation or in the alternative right of recovery against the insured.

CM No. 14654-CII of 2015 in FAO No. 4696 of 2015

Prayer in this application is for condoning delay of 191 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 191 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 4696 of 2015

The sole submission made by counsel for the appellant is that as the offending car stood sold by the registered owner to M/s Cargo Motors Private Limited, Chandigarh prior to the occurrence and the purchaser issued certificate

Ex. R1, Mohinder Singh, registered owner of the vehicle cannot be fastened with liability to pay compensation.

Counsel representing the insurance company as well as M/s Cargo Motors Private Limited have supported findings of the Tribunal upholding plea of the claimants that Mohinder Singh (respondent No. 2 therein) is jointly and severally liable to pay compensation being registered owner of the vehicle in question. In support of their contention, they have relied upon judgments of Hon'ble the Supreme Court **Pushpa @ Leela and others vs. Shakuntala and others 2011 (2) RCR (Civil) 616** and **Naveen Kumar vs. Vijay Kumar and others 2018(2) RCR (Civil) 74.**

The contention raised by counsel for the appellant that registered owner of the vehicle is entitle to be exonerated of his liability to pay compensation on the premise that the offending vehicle already stood sold to M/s Cargo Motors Private Limited is not meritorious and liable to be rejected as the controversy stands set at rest by the latest judgment of Hon'ble the Supreme Court of India in **Naveen Kumar's case (supra)** wherein the court on a detailed consideration of various judgments on the issue including the judgment in **Pushpa @ Leela and others' case (supra)** and definition of 'owner' under Section 2(30) of the Motor Vehicles Act, 1988 has held that the registered owner is liable to pay compensation. In this view of the matter, contention raised by the appellant is highly misconceived and ordered to be rejected.

For the foregoing reasons, the appeal sans merit and is accordingly dismissed leaving the parties to bear their own costs.

FAO No. 9988 of 2014

Counsel for the appellant has submitted that as the offending vehicle stood registered in the name of Mohinder Singh son of Charan Singh, the appellant cannot be fastened with liability to pay compensation to the claimants. Another submission made by counsel is that Mohinder Singh had taken back the vehicle and paid Rs. 50,000/- to M/s Cargo Motors Private Limited, therefore, Mohinder Singh cannot derive any advantage to his contention from certificate Ex. R1. It is argued with vehemence that in view of ratio laid down in **Pushpa @ Leela and others' case (supra)** and **Naveen Kumar's case (supra)** only registered owner and not the subsequent purchaser can be held liable to pay compensation.

Counsel representing Mohinder Singh as well as the insurance company have supported findings of the Tribunal with regard to respondent No. 4 therein being jointly and severally liable to pay compensation.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that in the two judgments relied upon by counsel for the parties, the issue before Hon'ble the Supreme Court was whether the person whose name is reflected in records of registering authority as owner of the vehicle involved in the accident can escape his liability to pay compensation on the plea that the vehicle stood sold to a third party. As has been held hereinbefore while deciding FAO No. 4696 of 2015, the court has held that the registered owner cannot escape his liability to pay compensation on the pretext that he had already sold the vehicle to a third person whose name did not figure in the records of the registering authority or to say that the vehicle was not registered in his name on the day of occurrence. In the referred judgments, it was not the issue before Hon'ble the Supreme Court whether the subsequent purchaser who is in control and possession of the vehicle can be held jointly and severally liable to pay compensation or otherwise. In this view of the matter, the appellant cannot derive any advantage to its contention from the referred authorities to contend that it is not liable to pay compensation to the claimants.

This brings the Court to plea of the appellant that Mohinder Singh had taken back the car and paid an amount of Rs. 50,000/- which was earlier adjusted towards price of the new car, reference whereof has been made in certificate Ex. R1. The Tribunal, in para 17 of the award, has held that neither the aforesaid fact has been pleaded by respondent No. 4 in the written statement nor any documentary evidence has been produced to prove this fact. Thus, from certificate Ex. R1, it appears that respondent No. 4 purchased the offending car from respondent No. 2 and adjusted its price in price of the new car purchased by respondent No. 2.

Perusal of the written statement filed by the appellant (respondent No. 4 therein) makes it evident that no such plea had been raised in the written statement. On the contrary, in para 24 of the written statement, it has been averred that the answering respondent has nothing to do either with the car or its owner i.e. respondent No. 2 or the driver i.e. respondent No. 1. The very fact that appellant sought to raise a plea that the car was taken back by Mohinder Singh and he paid the amount of Rs. 50,000/- to the appellant goes a long way to prove correctness of certificate Ex. R1 issued by Cargo Motor Private Limited. In absence of any plea that the car in question was returned by the appellant to Mohinder Singh, the appellant is bound by the document Ex. R1 wherein it has been specifically mentioned that the car in question has been bought by Cargo Motors Private Limited @ Rs. 50,000/- and the amount has been adjusted as a margin money against new car INDIGOeCS LS delivered by same name. The appellant being the purchaser and in possession of the car in question cannot escape its liability to pay compensation to the claimants. In this view of the matter, findings recorded by the Tribunal holding the appellant jointly and severally liable to pay compensation to the claimants cannot be faulted with.

In view of what has been discussed hereinbefore, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

FAO NO.9721 of 2014

The sole submission made by counsel for the appellant is that as registered owner-cum-insured of the vehicle failed to plead and prove that the offending vehicle was driven by the person holding a valid licence or who was not disqualified from driving the vehicle in question, the insured is guilty of committing breach of terms and conditions of the insurance policy, therefore, the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative, right of recovery against the insured. In support of his contention, he has relied upon latest judgment of Hon'ble the Supreme Court **Pappu vs. Vinod Kumar Lamba and another 2018(1) PLR 425.**

Counsel representing registered owner of the vehicle and M/s Cargo Motors Private Limited have supported findings of the Tribunal whereby insurance company has been held jointly and severally liable to pay compensation.

The Tribunal has answered issue No. 1 in favour of the claimants and held that Amarjit Singh died due to receipt of injuries in the accident in question that took place because of rash and negligent driving of the offending vehicle by Jagjit Singh (respondent No. 1 therein). The Tribunal has framed issue No. 3 to the following effect:-

> "Whether respondent No. 1 was not having a valid driving licence at the time of accident? OPR-3"

The said issue was answered against the insurance company with the observations that no evidence has been led in support of this issue. The Tribunal has failed to appreciate that it was obligation of the driver or/and registered owner/insured of the offending vehicle to produce the driving licence on record and only thereafter the insurance company could discharge the onus if licence possessed by Jagjit Singh is valid or otherwise. In the case at hand, driver of the vehicle was proceeded against ex parte. The registered owner failed to plead and prove that the vehicle was driven by a person who was possessing a valid licence or not disqualified from driving the vehicle in question. As the registered owner has failed to discharge his initial obligation of producing the driving licence by raising the aforesaid plea, it can be safely held that driver did not possess any licence. As the vehicle was driven by a person who did not have driving licence, the insurance company is certainly entitled to press for right of recovery against the insured after payment to the claimants. The right of insurance company to have recovery right against the insured is squarely covered by judgment of Hon'ble the Supreme Court in **Pappu's case (supra).** However, the insurance company would pay compensation to the claimants in discharge of its obligation created under the insurance policy.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms leaving the parties to bear their own costs.

Before parting with this order, it is pertinent to mention that counsel for the claimants would inform that till date, the insurance company has not paid compensation to the claimants. Counsel for the insurance company is directed to ensure that compensation awarded by the Tribunal is deposited with the Tribunal within a period of one month (if not already paid) from the date of receipt of certified copy of the judgment.

(Rekha Mittal)
Judge

19.4.2018
paramjit

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