IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 5759 of 2015
Date of decision:- 10.01.2018

National Insurance Co. Ltd. ...Appellant

Versus

Smt. Rajwanti & others ...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ompal Sharma, Advocate,
for the appellant.

Mr. Ashish Gupta, Advocate,
for respondent Nos. 1 and 2.

RITU BAHRI J. (Oral)

Learned Counsel for the appellant filed the present appeal against the Award dated 23.04.2015 passed by the Learned Motor Accident Claims Tribunal, Gurgaon, (hereinafter referred to as 'the Tribunal') whereby the respondent No. 1 and 2 (Claimants) as the said award is without jurisdiction besides others.

Brief facts of the case are that on 17.12.2012, Vishnu (since deceased) alongwith his aunt (Tai) Resham, Uncle Dharambir and other persons were coming from Tijara to Ferozpur Jhirka in Bus No. RJ-32/PA-1167 being driven by respondent No.2 in a very rash and negligent manner. At about 10.00 am, when the bus reached ahead of Jhir Mandir on Naharkhori turning, a pickup bearing registration No. HR No. 74 -4388 came from front side being driven by its driver in a rash and negligent manner. Respondent No. 2 took sudden brakes to save the accident, but hte bus struck with the pickup and head of Vishnu (since deceased) collided with great force with the angle in the bus. As a result thereof, Vishnu (since deceased) sustained serious head injury and became unconscious. After the accident, Vishnu was taken to Mittal Hospital Alwar where he declared dead. Consequently, the claimants (respondent Nos. 1 and 2) filed a claim petition before the Tribunal.

Upon notice owner-respondent No. 3 and driver-respondent No.4 (respondent No. 1 and 2 in the claim petition) appeared and fild joint written statement. It was submitted that respondent No. 4 was holding genuine, valid and effective driving licence at the time of alleged accident and driving the said bus under the control, supervision of respondent No. 1 and the vehicle was insured with respondent no. 3-Insurance Company, hence the respondent No. 3 is liable to indemnify the claim of the petitioners, if any. A false FIR was registered by the police.

Insurance-Company-appellant (respondent No. 3 in the claim petition) contensted the claim of the claimants and pleaded taht the petition is not maintainable as respondent No. 2 was not having valid and effective driving licence, non compliance of Section 134 (c) of the Motor Vehicles Act, the petition being bad for mis-joinder and non-joinder of necessary parties, jurisdiction etc. It has been submitted that the accident occurred on 17.12.2012 and the FIR was lodged on 11.01.2013 i.e., after 25 days from the accident in connivance with the police. Rest of the averments have been denied.

From the pleading of the parties, following issues were framed:

1. Whether the accident in question took place by the use of vehicle bearing No.RJ-32/PA-1167?OPP
2. If issue no. 1 is proved, whether petitioners are entitled to compensation on account of death of vishnu in the accident and

if so how much and from whom?OPP

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

4. Relief.

Learned Counsel for the respondent No. 3 at this stage prayed for dismissal of petition on the ground that this court has no territorial jurisdiction to entertain the present claim petition as neither the petitioners are residents of District Gurgaon nor the accident occurred within the jurisdiciton of District Gurgaon. The accident occurred within the jurisdiction of P.S. Ferozpur Jhirka, District Nuh. It has further been contended that the claim petition could not have been filed at Gurgaon merely because the branch office of Insurance Company (respondent NO.3) is also situated at Gurgaon. In support of his submission, he has relied upon ***Sonic Surgical Versus National Insurance Company Ltd. 2009 Consumer Protection Judgment 40.***

On the basis of the evidence led by the parties, the Tribunal came to a conclusion that this court is of the considered view that the case law cited by the learned counsel for the respondent No. 3 is not appicable in the facts and circumstances of the case for the reasons that the said judgment was passed especially keeping in view the unamended provisions of Section 17 of Consumer Protection Act, 1996 and also stated that proceedings before this Tribunal for grant of compensation is a result of benevolent provisions of law. Once the parties have submitted to the territorial jurisdiction of this Court and the branch office of one of the respondents is located at Gurgaon and the matter has been contested by both the parties to the hilt, this court does not find any jurisdiction in relegating the parties to the fresh round of litigation and does not find any force in the arguments of learned counsel for respondent No. 3 for dismissing the claim petition merely on the ground of territorial jurisdiction and awarded total compensation i.e. Rs. 5,18,000/- in favour of claimants.

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal on three grounds.

First ground is that the court did not have been jurisdiction to entertain the present petition.

Secondly, the claimants did not implead neither the owner of bus No. RJ 32/PA-1167 nor the driver of said pick i.e. HR 74-4388 up as a party.

Thirdly, the award in question is on higher side.

The main ground to challenge the impugned Award is that the Tribunal did not have been jurisdiction to entertain the present petition and Owner and Driver should be the parties.

I have heard learned counsel for the appellant and perused the case file.

A perusal of the award shows that the Insurance Company had the office at Gurgram and the accident took place in Zira which at present is in the District of Nuh.

A perusal of the order shows that the FIR Ex. P6 was registered at Police Station Jhirka which falls is in the Distrcit Nuh and after claim petition was filed insurance company had did not raise any objection regarding jurisdiction of the Court at Gurgram and after going through the evidence respondent no. 2 is liable being the person at fault for causing the accident. The liablity of respondent no. 1 is vicarious being owner of the offending vehicle. As per insurance Policy (Ex. P25) the vehicle involved in the accident was insured with responndent NO. 3. No evidence has been led by the respondent No. 3 to prove that the respondents No. 1&2 had violated any condition thereof. Therefore, respondent NO. 3 cannot escape from its liability to indemnify the insured.

After going through the impugned award, no illegaility, much less perversity has been found therein warranting intereference by this Court. The tribunal has assessed the compensation after appreciateing evidence in the right perspective and it is noterworthy, that the issue regarding jurisdiction was not found any force by the Tribunal .

Resultantly, the present appeal stands dismissed.

10.01.2018 **(RITU BAHRI)**
Riya Grover ***JUDGE***

Whether speaking/reasoned Yes
Whether reportable No