

RA-CR-21-2019(O&M) in
FAO-3250-2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RA-CR-21-2019 in
FAO-3250-2015
Date of decision:-14.5.2019

M/s Chatha Service Station through its Proprietor Amandeep Singh

...Applicant/Appellant

Versus

Lalmati Devi and others

...Respondents

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

Present: Mr.G.S. Punia, Sr.Advocate with
Ms.Harveen Kaur, Advocate for the appellant.

Mr.Ashwani Talwar, Advocate
for the insurance company.

H.S. MADAAN, J.

Petitioners – Mrs.Lalmati Devi – wife, Upinder Patel aged 22 years, Dharminder aged 18 years – sons and Ms.Mamta Kumari aged 18 years daughter of Rampreet Patel, an unfortunate victim of a road side accident had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Mohan Singh – driver, M/s Chatha Service Station village Lakhnour, District Mohali through its Proprietor Amandeep Singh – owner and The New India Assurance Company Ltd., Mohali - insurer of tanker No.PB-65-H-1524 (hereinafter referred to as the offending tanker), claiming compensation to the tune of Rs.17,20,000/- on account of death of

Rampreet Patel in the accident.

Briefly stated, facts of the case as per the version of the claimants are that on 22.6.2012 at about 7:00 a.m. in the area of bus stand Chunni Kalan, respondent No.1 – Mohan Singh by his rash and negligent driving of the offending tanker had hit Rampreet Patel, who was standing in front of a shop at bus stand Chunni Kalan, resultantly he had suffered multiple injuries; though Rampreet Patel was shifted to PGI, Chandigarh but he succumbed to the injuries on 23.6.2012; that an FIR No.64 dated 22.6.2012 under Sections 304-A, 337, 338, 427, 279 IPC was got registered by one Randhir Singh with Police Station Bassi Pathana with regard to the accident. According to the claimants, deceased was aged about 40 years, working as a mason earning Rs.17,000/- per month and the claimants were dependent upon his earnings to make their both ends meet.

The claim petition was contested by all the three respondents. Respondent No.1 – Mohan Singh denied that he had caused any accident by rash and negligent driving of the offending tanker resulting in causing death of the deceased. Respondent No.3 – the insurance company while resisting the claim petition raised legal objection that since respondent No.1 was not having a valid driving licence at the time of accident, therefore, it is absolved of any liability to pay compensation. It took up various legal pleas also.

Finally, all the respondents came up with a prayer for dismissal of the claim petition.

On the pleadings of the parties, following issues were

framed:-

1. Whether Rampreet Patel son of Gurak Patel died in a vehicular accident, which took place on 22.6.2012 due to rash and negligent driving of respondent No.1 on tanker No.PB-65-H-1524? OPP.
2. Whether the claimants are entitled to compensation and what extent and from whom? OPP.
3. Whether the respondent No.1 was not having valid and effective driving licence as alleged? OPR3.
4. Relief.

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

In support of his case, the claimants examined Dharminder as CW1 and Randhir Singh as CW2. The claimants also tendered in evidence FIR as Ex.P1, photocopy of post-mortem report of deceased as Ex.P2 and copy of death certificate as Ex.P3.

On the other hand, respondent No.1 Mohan Singh appeared as RW1.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants, issue No.3 against respondents No.1 and 2. Resultantly, the claim petition was accepted by the Tribunal and compensation of Rs.8,55,000/- with interest and cost was granted in favour of the claimants payable by all the three respondents jointly and severally. However, the Insurance Company was found entitled to recover the amount paid by it to the claimants as compensation under the award from respondents No.1 and 2.

This award left the respondent No.2 – M/s Chatha Service Station through its Proprietor Amandeep Singh aggrieved and he has approached this Court by filing the present appeal.

Notice of the appeal was given to the respondents, who put in appearance through counsel.

After hearing arguments, an application under Order 41 Rule 27 read with Section 151 CPC for producing training certificate of Mohan Singh – driver and memo of recovery dated 22.6.2012 as additional evidence so moved by the appellant was dismissed. The appeal was found to be without merit and the same was dismissed vide judgment dated 7.2.2019.

Thereafter, the appellant has moved an application under Order 47 Rule 1 read with Section 114 CPC for review of the judgment contending that absence of endorsement as required by proviso to Section 14(2) of Motor Vehicles Act, 1988 would not constitute sufficient ground to enable the insurance company to avoid its liability unless it has contributed to the accident. The judgments i.e. *National Insurance Company Limited Vs. K. Ramasamy & others, 2008 ACJ 516*, *United Insurance India Co. Limited Vs. A. Verlakshmi & Others, 2015 ACJ 132* and *National Insurance Co. Ltd. Vs. Swarn Singh & Others, 2004(3) SCC 297* have been referred to contending that the Court has wrongly observed that RW1 Mohan Singh has admitted that at the time of accident he was carrying oil in the tanker though it is so mentioned in the Award passed by the Tribunal. Several judgments in the application have been mentioned contending that the judgment need to be reviewed and the

appeal of the appellant be allowed and findings of the Tribunal giving rights of recovery be set aside.

The application is being resisted by the insurance company. In the written reply filed by it, the insurance company has taken up preliminary objections contending that applicant has in fact sought re-hearing of the appeal, which is not permissible under Order 47 Rule 1 CPC and no ground is made out to accept the application. On merits, material assertions in the application are controverted contending that in case the appellant wants to assail statutory provisions i.e. proviso to Section 14(2) of the Motor Vehicles Act, 1988, the remedy is by way of moving a petition under Section 226 of the Constitution of India. Even otherwise, the judgments referred to in the application are distinguishable on the facts of the case. The insurance company is entitled to get recovery rights, which were rightly granted to it by the Tribunal and appeal filed by the insured seeking setting aside of the award to that extent was rightly dismissed. In the end, respondent – insurance company prayed for dismissal of the review application.

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

Learned counsel for the applicant has referred to Full Bench judgment by Himachal Pradesh i.e. **N.D. Co-op Transport Socy. Versus Beli Ram etc., 1981 AIR(H.P.) 1** wherein it was observed that when the Court had failed to take into consideration an existing decision of the Apex Court and the Apex Court had taken different view on a point covered by its judgment, it would amount to mistake or error apparent on

the face of record, however, such a failure in considering decision of the High Court does not an error or mistake on the face of record. He has further referred to judgment **National Insurance Co. Ltd. Versus K Ramasamy and others, 2006(13) RCR(Civil) 279** by Madras High Court wherein dealing with a claim petition in case of motor accident when driver of vehicle was not holding licence to drive goods vehicle, carrying dangerous or hazardous goods, but was holding heavy motor vehicle licence, however the licence did not carry any endorsement authorising him to drive vehicles carrying dangerous and hazardous goods, with no evidence being there that absence of endorsement has in any manner contributed to the accident, it was observed that absence of endorsement is only a minor and inconsequential deviation with regard to licensing conditions and would not constitute sufficient ground to deny benefit of insurance to third parties and since insurance company had failed to establish breach on the part of the owner of vehicle, the insurance company was held to be liable to pay compensation. He has further relied upon authority **United India Insurance Comp. Ltd. Versus A. Verlaxmi and others, 2013(24) RCR(Civil)637** by Chhattisgarh High Court, wherein it was observed that when the offending vehicle was tanker and driver of the tanker was authorized to drive light motor vehicle and heavy goods vehicle, the accident had not occurred on account of fact that there was no endorsement to drive goods carriage carrying goods of dangerous nature, the endorsement neither increases efficiency of driver nor in its absence efficiency of driver is likely to be reduced in any manner, rather it only certifies additionally that he is authorized to drive goods carriage

carrying goods of dangerous or hazardous nature and for driving such vehicle no further expertise or driving is required. Therefore, it could not be said that licence was not properly obtained and there was breach of terms of policy. The insurance company was liable to satisfy award of compensation. He has further relied upon Apex Court judgment i.e. **National Insurance Co. Ltd. Versus Swaran Singh and Ors., 2004(2) RCR(Civil)114** wherein it was observed that the insurer is entitled to raise all defences available under Section 149(2) of the Act including questioning of validity of driving licence. However, mere absence, fake or invalid at the relevant time are not the defences available to insurer against the insured or third parties; to avoid its liability towards the insured also the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of policy. It was further observed that the burden is on the insurer to establish breach of policy by leading cogent evidence and mere non-production of licence or evidence by the insurer cannot be considered as discharge of burden of insurer. Furthermore, learned counsel for the applicant has referred to judgment by a Co-ordinate Bench of this Court passed in FAO No.1210 of 2014(O&M) titled **National Insurance Co. Ltd. Versus Harbans Kaur and others**, wherein, it was observed that insurance company can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle.

On the other hand, learned counsel for the respondent –

insurance company has referred to judgment by the Apex Court titled as ***Oriental Insurance Co. Ltd. Versus Sony Cheriyan, 1999(4) RCR(Civil)111*** wherein it was observed that under the permit granted to the insured he could transport only non-hazardous articles and the insurance policy covered only those goods permissible under the Motor Vehicles Act; the insured was found carrying hazardous and highly flammable 'Ethyl Ether' article when the vehicle suffered complete damage due to fire caught by the chemical being carried; it was held that the claim was not covered under the policy, which is a private contract between the parties and its terms and conditions have to be strictly construed. The insurance company was not found to be liable. Another judgment referred to by learned counsel for the insurance company was ***National Insurance Co. Ltd. Versus Subramani @ Mani and Ors., 2005(22) RCR(Civil)209*** by a Division Bench of Madras High Court wherein while dealing with a case when driver of a lorry was not possessing a valid and effective driving licence to drive tanker carrying hazardous goods; the Tribunal while disposing of the claim petition had directed the insurance company to pay the compensation amount to the claimants and recover the same from the insured thereafter and in an appeal against the award by insurance company, it was held that insurer is entitled to recover from the insured the amount paid to third parties, if there was any breach of policy conditions and the appeal was dismissed. A judgment by a Co-ordinate Bench of this Court passed in FAO-2178 of 2013(O&M) and FAO-5232-2013(O&M) has also been pressed into service wherein it was observed that:

A perusal of Rule 9(3) reveals that the licensing authority on receipt of application which is referred to in clause 2 has to make an endorsement on the driving licence and the words used there are “shall”. When the owner had engaged the driver it was his responsibility to see that the licence had the necessary endorsement. He has failed to discharge his duty/responsibility placed upon a transporter/owner of goods carriage. The Tribunal had rightly exonerated the insurance company since there was a breach of the provisions of the insurance policy. The driving licence could not be accepted as a valid licence. The argument that on that particular journey the oil tanker was empty, would be meaningless. The oil tanker is used for transporting oil and the licence does not show any endorsement. It signifies that the driver did not have a valid and effective licence to drive a goods carriage which was meant for transporting hazardous and dangerous goods. There is no infirmity in the finding recorded by the Tribunal on this aspect.

Learned counsel for the insurance company pressed into service judgment **Kusum Lata and others Versus Satbir and others, 2011(2) ACJ 926** by the Apex Court wherein it was observed as under:

In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle.

*This Court is affirming that direction in view of the principles laid down by a three-Judge bench of this Court in case of **National Insurance Company Limited V. Swaran Singh and others reported in 2004(2) RCR(Civil)114: (2004) 3 SCC 297.***

Another judgment referred to by learned counsel for the insurance company was **Pappu and Ors. Versus Vinod Kumar Lamba and Anr., 2018(2) RCR(Civil)42** by the Apex Court wherein dealing with a case wherein the owner of the offending vehicle had produced insurance certificate indicating that offending vehicle was comprehensively insured by insurance company for unlimited liability, it was observed that insurer was required to pay claim amount awarded by Tribunal to the appellants in first instance with liberty to recover same from owner of the offending vehicle in accordance with law. It was further observed that insurance company was entitled to take defence that offending vehicle was driven by unauthorised person not having valid driving licence and onus shifted on insurance company only after owner of offending vehicle proved that driver of the offending vehicle was authorized by him to drive vehicle and was having valid driving licence at the relevant time and by merely producing valid insurance certificate in respect of offending truck was not make enough to make insurance company liable to discharge liability arising from rash and negligent driving by driver of vehicle.

After hearing counsel for the parties and going through the authorities referred to by them, I find that the application is doomed for failure basically for the reason that it does not fall within four corners of

Order 47 Rule 1 CPC. For ready reference the provision is reproduced as under:

1 . Application for review of judgment—

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

The appeal against the judgment passed by this Court is permissible. The appellant insured can take all the pleas so taken in the

application under reference in the appeal. The scope of appeal is wider than that of an application for review. There is certainly no mistake or error in the judgment passed by this Court much less apparent on the face of the record. I do not see any reason to review the judgment. The factual and legal position with regard to driver of the offending vehicle not possessing the requisite driving licence authorizing him to drive the transport vehicle carrying goods of dangerous or hazardous nature was discussed. It was also taken note of that even if the vehicle was taken to be empty at the time of accident as per version of the appellant, the oil tanker vehicle of appellant continues to be a vehicle meant for carrying dangerous or hazardous goods. The observations by the Tribunal made in that regard were also taken into consideration. The judgments referred to by learned counsel for the applicant may be helpful to him in appeal but while exercising power of review, the judgments cannot be re-written by this Court since scope of review is quite limited.

As such, no ground is there to accept the application and review the judgment passed by this Court.

Thus, the application stands dismissed.

14.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No