

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

FAO-1692-2006(O&M)

Date of decision:-26.11.2019

National Insurance Company Ltd.

...Appellant

Versus

Richpal and others

...Respondents

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

Present: Mr.Deepak Suri, Advocate and
Mr.Neeraj Khanna, Advocate
for the appellant.

None for respondent No.1.

None for respondents No.2 and 3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that petitioner Richpal son of Aban Singh, resident of Jagadhri had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Manik Chand – driver, Mohd.Ishaq – owner and National Insurance Company Ltd. - insurer of truck bearing registration No.HR-38-J-0305 (hereinafter referred to as the offending vehicle) for the reasons that on 20.11.2003 at about 8:30 p.m. in the area near CIA Staff, Jagadhri, he had sustained injuries in a motor vehicular accident, which took place due to rash and negligent driving of the offending vehicle being driven by respondent No.1 – Manik Chand inasmuch it had struck the bicycle of

petitioner/claimant from the rear side. Formal FIR No.587 dated 20.11.2003 regarding the accident was recorded.

According to the claimant, he was serving in the Police Department, getting Rs.4,000/- per month as salary; in addition to that he had agriculture income of Rs.10,000/- per month; a sum of Rs.40,000/- was spent on his medical treatment and now he has become a cripple and cannot walk properly.

On notice all the three respondents put in appearance. Respondents No.1 and 2 filed a joint written statement contesting the claim petition, though stating that the vehicle in question was insured with National Insurance Company Ltd. at the relevant time and the compensation amount, if any, is to be paid by such insurance company; that respondent No.1 was having a valid and effective driving licence at the time of alleged accident. On merits, such respondents pleaded that the mishap had taken place due to negligence of injured/claimant himself since he was under the influence of liquor at the time of accident.

In the written statement filed on behalf of respondent No.3 – insurance company, it has also taken up various legal objections with regard to maintainability of the claim petition etc. and raised statutory defences that the driver of the truck was not holding a valid and effective driving licence at the time of alleged accident, resulting in violation of terms and conditions of the insurance policy. According to the answering respondent, no such accident had taken place involving the truck in question and the claimant being a police personnel lodged a false FIR and wrongly involved the truck in question in the claim petition.

In the end, all the respondents prayed for dismissal of the claim petition.

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

1. Whether the accident dated 20.11.2003, took place due to rash and negligent driving of truck No.HR-38-J-0305 by respondent no.1 resulting into injuries on the person of claimant? OPP.
2. If issue No.1 is proved in affirmative, whether the claimant is entitled to any claim, if so as to what amount and from whom? OPP.
3. Whether the claim petition is not maintainable? OPR.
4. Whether the respondent no.1 was not having a valid and effective driving licence at the time of accident? OPR-3.
5. Relief.

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

On conclusion of trial after hearing arguments, the Motor Accidents Claims Tribunal, Jagadhri (hereinafter referred to as the Tribunal) vide award dated 6.12.2005 allowed the claim petition and awarded compensation of Rs.91,000/- with interest at the rate of Rs.7.5% per annum from the date of filing of the petition till realization, payable by respondents No.1 to 3 jointly and severally.

The split up of the compensation is as under:

i)	Compensation for future loss of income and future loss of amenities and expectations of life due to permanent	Rs.40,000.00
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	physical disability to the extent of 15%	
ii)	Compensation on account of expenditure on medical treatment which includes hospitalisation charges, expenses in purchasing medicines etc.	Rs.30,635.00
iii)	Compensation for pain and suffering due to fracture in both the legs	Rs.10,000.00
iv)	Compensation on account of loss of income and expenses on special diet during the period of treatment	Rs.10,000.00
	Total	Rs.90,635.00

The amount was rounded off to Rs.91,000/-.

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 the respondents, who initially appeared through counsel but later on there was no representation on their behalf.

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

The main thrust of argument of learned counsel for the appellant was that respondent No.1, who was allegedly driving the offending vehicle at the relevant time was not holding a valid and effective driving licence at the time of alleged accident, therefore it amounts to violation of the terms and conditions of the insurance policy, hence the appellant – insurance company is not liable to pay compensation.

After hearing learned counsel for the appellant, I find that such contention raised on behalf of learned counsel for the appellant – insurance company lacks merit. The Tribunal has dealt with such aspect in a very fine and appropriate manner. The observations in that regard containing in paras No.15 to 18 of the award are being reproduced as under:

15. So far as liability for making the above said amount of compensation is concerned, it is argued by learned counsel for respondent No.3 – Insurance company that there is no liability of the Insurance Company because respondent NO.1 did not produce the driving licence despite the directions given to him by this Tribunal. Rather, respondent No.1 did not appear thereafter and was proceeded ex-parte. Moreover, respondent No.2 the owner of the offending vehicle also did not appear in the witness box personally but he only examined his power of attorney holder RW1 Ashok Pathania and in these circumstances it can be concluded that onus on the insurance company stands discharged if the insurer fails to produce the driving licence, thus, the owner will be liable and not the insurer. In support of his arguments, learned counsel for the respondent No.3 has placed reliance on case titled “Balbir Singh Vs. Nikka Ram, 2001(3) RCR(Civil)(P&H) 665”, case “M/s New India Insurance Com Ltd. Vs. Surinder Paul, 1990(1) PLR(P&H) 318”, case “Smt. Sardari & others Vs. Sushil Kumar,

2004(1) PLR(P&H) 218”, case “New India Assurance Comp. Ltd. Vs. Lakhi Ram Prabhu Dayal & others, 1988(2) PLR(Delhi) 32”, case titled “Ishwar Bhai C-Patel @ Bachu Bhai Patel Vs. Harihar Behera and Anr., 1999(1) – Judicial Reports(Civil)(SC) 675”, case titled “United India Insurance Co. Ltd. Vs. Gian Chand, 1997(4) RCR(Civil)(SC) 102” and case titled “Shri Kashmiram Yadav and another Vs. Oriental Fire and Gen. Insurance AIR 1989(SC) 2002”.

16. On the other hand, it has been contended by learned counsel for respondent No.2 that if at all driver and owner of the offending vehicle did not produce the driving licence despite the directions given by the Tribunal, then also adverse inference cannot be drawn against them, so as to relieve insurance company to compensate the claimant. Learned counsel for respondent has placed reliance upon the case titled “Vikram Dutt Kapoor Vs. Amar Kaur, 2005(2) PLR(P&H) 364” and case titled “United India Insurance Company Vs. Balwant Singh 2000(1) PLR(P&H) 138”. In the above said authority, it has held that “when the driver of the offending vehicle did not appear as his own witness and even though the Insurance Company summoned him to appear as a witness he neither accepted the summons nor stepped into the witness box, Insurance Company held liable”.

17. After hearing both the parties and carefully perusal of

facts and circumstances of the case, I am of the considered view that respondents are jointly and several liable for making the above said amount of compensation to the claimant because insurance company has failed to discharge its burden to prove the respondent No.1 was not having valid and effective driving licence at the time of accident. It has not examined any witness including the driver respondent No.1 in the witness box. More so, it has also failed to prove that insured/owner of the offending vehicle has knowingly and deliberately committed the breach of conditions of insurance policy. Here reliance can be placed upon case titled "New India Assurance Co. Vs. Kamla, 2001(3) RCR-Civil(SC) 0716". Therefore, the authorities (supra) case 2001(3) RCR(Civil)(P&H) 665, 1990(1) PLR(P&H) 318, 2004(1) PLR(P&H) 281, 1988(2) PLR(Delhi) 32, 1999(1) – Judicial Reports(Civil & Rent) 675, 1997(4) RCR(Civil)(SC) 102, AIR 1989(SC) 2002 relied upon by the learned counsel for the insurance company are not applicable to the facts and circumstances of the case in hand because in the case in hand is not the case of the respondent – company that respondent was not having any licence, but it is the case that he was not having valid and effective driving licence at the time of accident. Therefore, even if the respondent No.1 did not produce the driving licence despite the directions of the Tribunal and respondent No.2 owner of the offending vehicle

did not appear personally in witness box, does not make any substantial change in the liability of insurance company to compensation the third party.

18. As a sequel to my above said findings, it is concluded that respondent no.1 driver and respondent no.2 owner of offending vehicle and respondent No.3 being Insurance Company are jointly and severally liable for making the above said amount of compensation to the claimant.

Since onus of proving issue No.4 was upon respondent No.3 – insurance company to discharge the onus by bringing enough cogent and convincing evidence on record but it has failed to do so. Therefore, under the circumstances, it cannot pass the buck and start asserting that it is not liable to indemnify the insured with regard to its liability to pay compensation under the impugned award.

No other point was argued.

Resultantly, the appeal is found to be without any merit and is dismissed accordingly.

26.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No