IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3 of 2007 (O&M)
DECIDED ON: MAY 20, 2019

BALBIR SINGH

.....APPELLANT

VERSUS

NATIONAL INSURANCE CO. LTD. AND OTHERS
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vipul Babuta, Advocate
for the appellant.

Mr. Gopal Mittal Advocate
for respondent No.1-Insurance Company.

Mr. Malkeet Singh, Advocate
for respondents No.2 to 5.

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AVNEESH JHINGAN J. (ORAL)

The award dated 04.04.2006 passed by Motor Accident Claims Tribunal, Jalandhar (for short the 'Tribunal') has been assailed by the owner of truck bearing registration No. PB-10-AD-9519 (hereinafter referred to as the 'offending vehicle') being aggrieved of the recovery rights granted to the insurer.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The insurer of the offending vehicle has been arrayed as respondent No.1 and the claimants have been arrayed as respondents No.2 to 5 respectively. The driver and mother of the deceased have been arrayed as proforma respondents.

The facts in brief are that on 22.6.2001 Gurdeep Singh loaded the truck bearing registration No.PUW-4195 with bricks and was going from Jalalabad to Talwara. Balbir Chand was the cleaner. Truck was being followed by another truck driven by Iabql Singh. On his way, the truck driven by Gurdeep Singh was struck by a rashly and negligently driven offending vehicle. As a result of the impact, the Truck of Gurdeep Singh caught fire, body of Gurdeep Singh was trapped in the vehicle and he died. FIR No. 74 dated 22.6.2001 was registered.

The award was challenged by the claimants and the amount awarded by the Tribunal of ₹3,91,000/ was enhanced to ₹6,74,800/- vide award dated 11.03.2019 passed in FAO No. 2872 of 2006.

In the present appeal, the grievance is with regard to recovery rights given to the insurer of the offending vehicle on the ground that the driver of the offending vehicle was not holding a valid licence on the date of accident.

Heard learned counsel for the parties, perused the relevant documents produced by them.

Learned counsel for the appellant relies upon the decision of the Supreme Court in ***Pepsu Road Transport Corporation vs. National Insurance Company;* 2014 AIR (SC) 305.** He contends that the driver was having a licence and it was not his duty to verify the same, while employing him.

Learned counsel for the insurer contends that it was duly proved that the licence allegedly issued by DTO Guwahati (Assam) was fake. It was neither issued by the office of DTO Guwahati (Assam) nor renewed by it.

The contention raised by learned counsel for the appellant lacks merit.

From the record, it is forthcoming that the insurer produced a verification report by appointing an investigator. As per the report, the licence produced before the Tribunal was neither issued by DTO Guwahati (Assam) nor renewed by it. The Tribunal vide order dated 10.01.2004 directed the DTO, Guwahati (Assam) to verify the driving licence bearing No. 21958/97-98. Before the licence could be verified, the owner of the offending vehicle had moved an application dated 22.04.2006 wherein, he stated that he admits that the verification report produced by the insurer is correct and requested to make a statement before the Tribunal admitting the correctness of the report Ex.R2. A further prayer was made that recording of statement of DTO Guawahati (Assam) by local commissioner may kindly be dispensed with. The said application was allowed. The Tribunal relied upon the verification report and held that the licence produced was fake. It was held that all the respondents shall be liable to pay compensation to the claimants and insurer shall have recovery rights against the owner of the offending vehicle.

The reliance placed upon by the learned counsel for the appellant of the Supreme Court decision in ***Pepsu Road Transport Corporation's case (supra)*** does not enhance the case of the appellants. The relevant part of the said decision of Supreme Court is reproduced as under:

> *"8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the*

vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

It was held that the owner while employing the driver has to take reasonable care, test driving skills of driver and to check that he has a valid driving licence. It was not required that he will go from pillar to post to verify the same.

In the present case from the reading of the written statement filed by the owner of the offending vehicle, it is clear that no such pleadings were made in the written statement.

In the case before the Supreme Court the employer was Pepsu Road Transport Corporation. The driver was employed in the year 1994. He was imparted training and the accident took place after six years of his service in PRTC. In such circumstances, it was held that employer cannot be expected to go to the extent of verifying the genuineness of the driving licence with the licence authority.

In the present case no such stand was taken even in the written statement that at the time of employing the driver, the owner had satisfied himself about the driving skills of the driver and checked the driving licence.

In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

MAY 20, 2019
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Whether speaking/reasoned: ***Yes***
Whether reportable : ***Yes***