IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2300 of 2011 (O&M)
Date of decision : 5.4.2019
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New India Assurance Company Ltd., Patiala
................Appellant

vs.

Kusum Lata and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Monika Jangra, Advocate for
Ms. Vandana Malhotra, Advocate for the appellant.

Mr. K.S. Dhillon, Advocate for respondents No. 1 to 5.
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H. S. Madaan, J.

On account of death of one Vijay Kumar Mittal s/o Surinder Singh r/o Patiala, in a motor vehicular accident, his legal representatives, namely, his wife Kusum Lata, aged 48 years, son Venus Gupta, daughters Bandani Gupta and Banita, as well as mother Maya Devi, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Rajwant Singh – driver, Shri Raghu Nath Rai Memorial Educational and Charitable Trust (Registered), Head Office Chandigarh and Registered Office at SAS Nagar, Mohali – owner and New India Assurance Company

Limited, Divisional Office at Chhoti Baradari, Patiala, having office at Chandigarh – Insurer of Eicher Bus No. PB-65-F-4869 (hereinafter referred to as 'the offending bus'), claiming compensation to the tune of Rs.50 lacs.

Briefly stated, facts of the case are that on 20.12.2007, Vijay Kumar Mittal, aged about 48 years, working as Head Constable in Government Railway Police, was pillion riding scooter No. PB-11-AB-4544 being driven by Dalbir Singh s/o Chattar singh. They were coming from Punjabi University, Patiala side. At about 3.00 P.M. while the said scooter was in the area near Sandeep Motor Agency, Hira Bagh, Patiala, then the offending bus No. PB-65-F-4869, being driven by respondent No.1 Rajwant Singh, in a rash and negligent manner, came from Rajpura side and without blowing any horn, had hit the scooter. As a result, both the riders fell down on the road and suffered multiple grievous injuries. Vijay Kumar Mittal – injured was rushed to Amar Hospital, Patiala, where he remained admitted upto 8.1.2008. However, on that day he succumbed to the injuries suffered by him in the mishap. FIR No. 609 date 22.12.2007 was registered at Police Station Sadar, Patiala, for offences under Sections 279, 337 IPC against respondent No.1 Rajwant Singh.

After death of Vijay Kumar Mittal, offence under Section 304 A IPC was added.

On notice, respondents appeared and contested the claim petition by way of filing written statement. Respondents No. 1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No. 1 and 2, they had denied the assertions in the claim petition coming up with a stand that no such accident took place with the bus in question and a false FIR was lodged in the matter against respondent No.1.

In the written statement submitted on behalf of respondent No.3 Insurance company, it also denied involvement of bus in question in the accident, stating that the Insurance company was not liable to pay any compensation. All the three respondents prayed for dismissal of the claim petition.

Replication to the written statements were filed.

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

1. Whether deceased Vijay Kumar died in a motor vehicle accident caused by respondent No.1 rashly and negligently on 20.12.2007, as alleged ? OPP
2. Whether the claimants are entitled to the compensation as prayed for, if so from whom ? OPP
3. Whether respondent No.1 was not holding a valid driving license at the time of alleged accident/if so its effect? OPR
4. Relief.

The parties led evidence in support of their assertions. One of the claimants Venus Mittal son of deceased Vijay Kumar Mittal, stepped into witness box and proved averments in the petition.

Claimant Kusum Lata widow of the deceased appeared as AW-2 and further examined alleged eye witness Dalbir Singh to prove factum of the accident. They proved on record salary slip Exhibit P-1, FIR Exhibit P-2, copy of post mortem report as Exhibit P-3, cash memo issued by Amar Hospital as Exhibit P-4, receipts to prove expenses incurred on medical treatment Exhibits P-5 to P-95, matriculation certificate of claimant Kusum Lata as Exhibit P-96 and copy of insurance policy as Exhibit P-97.

Respondent Rajwant Singh stepped into with witness box as his own witness. However, the insurance company did not lead any evidence in rebuttal but tendered certain documents in evidence.

After hearing the arguments, the Tribunal had decided issue No.1in favour of the claimants. Issues No.2 and 3 were decided in favour of the claimants and against the respondents. Resultantly, vide award dated 9.12.2010, the Tribunal had awarded compensation of Rs.33,78,578/- + Rs.10,000/- to the claimants, payable by all the three respondents, jointly and severally.

Respondent No.3 – Insurance company felt aggrieved by the said award and has filed the present appeal, praying that the appeal be accepted and the award be set aside.

Notice of the appeal was given to the respondents, however, only respondents No. 1 to 5 had put in appearance.

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

Learned counsel for the appellant Insurance company argued that respondent No.6 – bus driver was not having a valid and effective driving license to drive the bus in question. In that way terms and conditions of the insurance policy were violated, absolving the Insurance company of its liability to pay the compensation. But even then the Tribunal had saddled the Insurance company with the liability.

On the other hand learned counsel for the claimants had contended that the Tribunal had framed specific issue as issue No.3 to the effect as to "whether respondent No.1 was not holding a valid driving licence at the time of alleged accident, if so, its effect". The onus was placed upon the Insurance company. However, the Insurance company just tendered documents, which included copy of form 10 in the register of Driving License relating to Rajwant Singh pertaining to renewal of the license upto 6.12.2008 by Licensing Authority Patiala Exhibit R-2. Corresponding entry Exhibit R-3 to show that the license was previously renewed upto 4.5.2000. Report made by Licensing Authority Patiala Exhibit R-4, copy of registration certificate Exhibit R-6, License Exhibit R-5 etc. The Tribunal on appreciation of evidence produced by the parties before it, came to the conclusion that respondent No.1 did possess a valid driving license at the time of accident in question and no fault can be found with such finding.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal has rightly decided issue No.3 against the Insurance company and no interference in such finding is called for. For ready reference, the relevant paras in that regard are being reproduced as under :-

> “30. The question which now crops up for determination is as to whether respondent No.1 Rajwant Singh possessed a valid driving license at the time of the accident respondent Rajwant Singh in this context deposed in his cross examination that driving license was issued to him by Licensing Authority, Patiala. He again stated that he had got his license renewed from Patiala. At the first instance, he had renewed his driving license in the year 1993. Originally he had been issued driving license by the Licensing Authority, Cuttack. He had got issued the said driving license through an agent, license at Cuttack. He did not deny that the driving which was allegedly issued to him by Licensing Authority, Cuttack was a forged document. Subsequently, when he was again suggested on this account, he denied the fact that the driving licence issued by Licensing Authority at Cuttack was a forged and fabricated document.
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> 31. There is a document on the record as Ex. R4. The Same is a mere photo stat copy of the letter written by Shri Rajan Bhatia Advocate Patiala to D.T.O. Patiala for verification of the DL.

No.32747/R/05 dated 7.12.2005 renewed in the name of Rajwant Singh. The licensing Authority, Patiala reported the fact that the said driving licence No. 32747 /R/05 dated 07.12.2005 valid for HTV only w.e.f. 7.12.2005 to 6,12.2008 was renewed by their office in the name of Rajwant Singh son of Pritam Singh. Prior to that driving license was renewed vide driving license No.6839/2000/R dated 14.9.2000 for the period 14.9.2000 to 13.9.2003 was again renewed by the DTO Office, Patiala in the name of Rajwant Singh as per office register No.371/R/2000. Prior to that the same driving license was renewed for the period 5.5.1997 to 4.5.2000 again by the office of DTO, Patiala in the name of Rajwant Singh as per office register No. 239/R/97. Prior to that the same driving license was renewed for the period of 11.2.94 to 10.2.97 by DTO Office, Patiala in the name of Rajwant Singh. His old renewal/issued driving license No.41173 dated 27.6.1983 was issued/renewed by Licensing Authority, Cuttack as per office record register No.116/R/94. So as evident from this report arid as evident from the driving licence available on the record, the Licensing Authority, Patiala had renewed the driving licence lately w.e.f. 07.12.2005 to 06.12.2008.

32. The question is as to whether the report dated. 28.9.2010 is sufficient to rebut the validity of the driving license. The answer is in the negative. If it is the case of the Insurance Company that no valid driving license was issued at the first instance by the Licensing Authority Cuttack, it was incumbent upon the insurance company to lead admissible evidence in this regard. The insurance company is merely relying upon the letter written by Regional Transport Authority/ Cuttack to the legal officer of the Insurance Company. In this case the driving license has been renewed by the Licensing Authority, Patiala not once but four times. As per rules whenever a driving license is submitted before the local Licensing Authority, for the purpose of renewal and the driving license stands issued by some other Licensing Authority, the local Licensing Authority always confirms the factum of the original issuance and validity of the license from the Licensing Authority which had issued the driving license at the first instance. In this case the license was renewed not once but four times by the licensing Authority, Patiala. It cannot be accepted

> that the Licensing Authority, Patiala had not verified about the original issuance and genuineness of the driving license before it renewed the driving license not once but four times. In these circumstances, I am of the confirmed and considered view that the document Mark RX which is merely a letter written by Regional Transport Authority, Cuttack to the Insurance Company is not sufficient enough to rebut the proof which has been furnished by respondent No.1 to prove that his license was renewed by the local Licensing Authority. Therefore, it is to be concluded that respondent No.1 did possess a valid driving license at the time of the accident in question. So, accordingly, this issue is decided against the respondents and in favour of the claimants."

It being so, the Insurance company cannot escape liability to pay the compensation, coming up with a plea that respondent No.1 was not having a valid and effective driving license at the time of accident, resulting in violation of terms and conditions of the insurance policy.

One more argument put forward by learned counsel for the appellant was that the deceased was not wearing a helmet at the time of accident and had exposed himself to the consequences ensuing on vehicle collusion. True, a person riding a two wheeler should wear a helmet, for his/her safety, but in the present case, keeping in view the multiple injuries suffered by the deceased on his person as a result of accident, there is nothing to show that if he was wearing a helmet at the relevant time, he would have not received those injuries. Even otherwise the fault of the driver of the offending bus does not get diluted for the said reason. The claimants have successfully proved that respondent No.1 was author of the accident by rash and negligent driving of the offending bus and his such rash and negligent driving was solely responsible for the accident. Therefore, the Insurance company cannot avoid its liability taking up such type of pleas.

Learned counsel for the Insurance company has tried to find fault with the conclusions drawn by the Tribunal with regard to grant of compensation by taking all the allowances payable to the deceased into consideration. However, the counsel could not convince me that the Tribunal had fallen in error in doing so. In authority ***Sushil Sharma and others vs. Bachitar Singh and others, 2011 (2) ACJ 1441,*** by the Apex Court, it has been observed that gross salary of the deceased is to be considered including the allowances and allowances should not be deducted while commuting the compensation.

Another arguments put forward by learned counsel for the appellant was that the age of the deceased mentioned in the post mortem report was more than 50 years but the Tribunal took the age to be 48 years.

Again this argument is misconceived. The Tribunal had taken the age of the deceased in view of the evidence available before it. Therefore, no fault can be found with the Tribunal taking age of the deceased to be 48 years. The date of birth being 19.7.1960 and accident had taken place on 20.12.2007. he was obviously aged a little more than 47 years and the Tribunal has rightly taken his age as 48 years. The Tribunal has dealt with all the aspects now being put forward by learned counsel for the appellant in a very convincing manner.

The award passed is well reasoned one based upon proper appraisal and appreciation of evidence and correct interpretation of law. No fault can be found with it. The appeal is found to be without any merit and the same stands dismissed.

(H.S. Madaan)
Judge

5.4.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No