IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1906-2012(O&M)
Date of decision:-2.7.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Narinder Singh and others

...Respondents

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

Present: Mr.Rajesh K. Sharma, Advocate
for the appellant.

Mr.Abhishek Goyal, Advocate
for respondents No.1, 2, 5 and 6.

Mr.Yogesh Goel, Advocate
for respondents No.3 and 4.

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<u>H.S. MADAAN, J.</u>

On account of death of Smt.Parkash Kaur in a road side accident, which took place on 1.9.2008 at about 9:15 p.m. in the area of Chandigarh Road, Ludhiana statedly on account of rash and negligent driving of truck trailer bearing registration No.PB-23G-5234 (hereinafter referred to as the offending vehicle) by respondent No.1 – Harpal Singh, her legal representatives i.e. Narinder Singh – son and Bhupinder Kaur - daughter had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 impleading Harpal Singh – driver, M/s Gurinder Logistics Pvt. Ltd. - owner and New India Insurance Company - insurer of the offending vehicle as respondents. Baljit Singh and Harjinder Kaur were also impleaded as proforma respondents in that petition.

On getting notice, respondents No.1 to 3 had appeared and contested the claim petition. Issues on merits were framed. The parties were afforded opportunities to lead evidence.

Vide Award dated 21.11.2011, the claim petition was accepted by learned Motor Accidents Claims Tribunal, Ludhiana and compensation of Rs.3,17,456/- along with interest @ 6% per annum from the date of filing of the petition till its realization besides cost of the claim petition was awarded to the claimant No.1 and proforma respondent No.4 in equal shares payable by respondents No.1 to 3 jointly and severally.

The respondent No.3 – insurance company felt aggrieved by the said Award and has approached this Court by way of filing an appeal praying that the same be accepted, the impugned award be set aside and the claim petition be dismissed qua the appellant – insurance company.

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

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

The only argument advanced by learned counsel for the appellant – insurance company was that the offending vehicle was not having a valid permit, which resulted in violation of terms and conditions of the insurance policy, as such the appellant – insurance company was absolved of its liability to pay compensation on behalf of the insured.

However, learned counsel for the respondents have countered the arguments contending that no such objection was taken by respondent – insurance company in the written statement; that no issue in that regard was struck by the Tribunal; no evidence was adduced by respondent – insurance company in that respect and no such argument was advanced before the Tribunal. Therefore, at this stage in appeal no such objection can be taken in such a manner.

After hearing learned counsel and going through the record, I find merit in the submission put forward by learned counsel for the respondents. If the insurance company was serious in raising an objection that the offending vehicle was being plied without valid permit at the time of the accident, resulting in breach of terms and conditions of the insurance policy absolving the insurance company of its liability to pay compensation on behalf of the insured, then a specific objection in that regard should have been taken in the written statement and an issue got framed by the Tribunal in that regard, thereafter leading evidence to prove such contention and then raising an argument in that regard before the Tribunal. The appellant – insurance company is not shown to have acted in that manner. As such for the first time in appeal, this objection cannot be allowed to be taken in such a manner and the Court cannot give finding in favour of the insurance company that the offending vehicle was being plied without a valid permit. Situation might have been different, if such objection had been specifically taken by the insurance company in its written statement and evidence adduced before the Tribunal in that regard. The insured could have been asked to place on file a copy of the permit and if insured had failed to do so then some presumption could be drawn against it but not in the manner without insurance company resorting to the said procedure. A perusal of the record goes to show that respondent – insurance company in the preliminary objections of the written statement had contended that the petition was not maintainable as respondent No.1 driver was not holding a valid and effective driving licence. The Tribunal had framed the following issues:

1. Whether the claimants are legal heirs of deceased Parkash Kaur?OPP

2. Whether deceased Parkash Kaur died due to rash and negligent driving of Trolla no.PB-23G-5234 caused by respondent no.1 on 1.9.08 at about 9.15 PM in the area of Chandigarh Road, Ludhiana?OPP

3. If issue no.1 is proved in affirmative, whether claimants are entitled to recover compensation? If so, from which of the respondents and to what amount?OPP

4. Whether respondent no.1 was not possessing a valid and effective driving licence and valid registration certificate at the time of alleged accident?OPR-3

5. Whether the claim petition is not maintainable?OPR

6. Whether the petition is bad for non joinder of necessary parties?OPR

7. Relief.

In that way, the objections taken by respondents were covered by the issues without there being mention of the offending truck trailer not having any valid permit.

Under the circumstances, it cannot be said that the offending vehicle was being plied without any valid permit and that the insurance company is not liable to indemnify the insured to the extent of the compensation amount awarded by the Tribunal.

No other argument was advanced.

The appeal stands dismissed with costs.

2.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No