IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6872-2011 (O&M)
Date of decision: 18.11.2019

Sagar Transport Company Pvt. Ltd.

...Appellant

Versus

Dalip Kaur and others

...Respondents

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

Present: Mr. A.K. Khunger, Advocate for the appellant.

None for respondents No.1 to 5.

Mr. Pardeep Goyal, Advocate for respondent No.7.

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H.S. MADAAN, J.

Briefly stated the facts of the case are that one Gamdoor Singh son of Gurdev Singh, aged about 45 years, engaged in avocation of a labourer, had expired in a motor vehicular accident, which took place on 10.09.2007 at 10.30 am in the area of Village Kot Bhai on Gidderbaha-Kot Bhai link road, on account of rash and negligent driving of bus bearing registration No.PB05-C-9997 (for short 'the offending bus') by Jaswant Singh respondent No.1. Legal heirs/Legal representatives of such deceased i.e. mother Dalip Kaur, aged about 70 years, widow Manjit Kaur, aged about 43 years, minor son Gurbhagat Singh, aged about 13 years, minor daughter Veerpal Kaur aged about 11 years, another minor son Gurdeep Singh aged about 09 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Jaswant Singh-driver, Rajan Setia, Proprietor Sagar Transport Co. Pvt. Ltd., Abohar Road, Muktsar-owner and New India Assurance Company Ltd., Malout-insurer of the offending bus, claiming compensation of Rs.10 lacs.

On getting notice, all the three respondents put in appearance and contested the claim petition by filing written statements. Issues on merits were framed.

The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

After hearing arguments, the Motor Accidents Claims Tribunal, Bathinda (for brevity 'the Tribunal') vide award dated 16.08.2011, accepted the claim petition and awarded compensation of Rs.3,45,000/- to the claimants payable by all the three respondents, jointly and severally with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization. The detailed directions with regard to mode, manner and payment of compensation and its apportionment are given in the award itself. It has been observed that since respondent No.1 was not having a legal and valid driving license on the day of accident, respondent No.3-insurance company would pay the compensation amount to the claimants and thereafter, it would be entitled to recover the same from driver and owner of the bus in question.

The owner of the bus Sagar Transport Company Pvt. Ltd, Abohar road Muktsar feeling aggrieved by grant of recovery rights to respondent No.3-insurance company, approached this Court, by way of filing the present appeal, notice of which was given to the respondents who have put in appearance to offer a contest.

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

Learned Tribunal on analysis of the evidence adduced before it, has come to the conclusion that respondent No.1 was author of the accident by his rash and negligent driving of the offending bus. While coming to this conclusion, the Tribunal has relied upon eye witness account provided by AW2 Sukhdev Singh in his affidavit Ex.AW2/A and AW3 Dev Raj who has submitted his affidavit as Ex.AW3/A, deposing in consonance with the case of the claimants that the accident in which the deceased Gamdoor Singh had lost his life, had occurred on account of rash and negligent driving of the offending bus by respondent No.1. Copy of the FIR registered regarding the accident Ex.C1, copy of post mortem report of Gamdoor Singh Ex.C2, copy of statement of Jagga Singh recorded in criminal case Ex.C3 has been taken into consideration while coming to such conclusion. It has further been noticed that respondent No.1 Jaswant Singh, who was driver of the bus had not stepped into the witness box to rebut the evidence adduced by the claimants and that although, he had filed written statement to the claim petition but thereafter, opted to stay away from the case and was proceeded against ex parte. The finding so recorded is proper and appropriate and does not call for any interference.

While quantifying the compensation payable, the Tribunal has taken age of the deceased to be 45 years, his occupation as a labourer and monthly income of deceased to be Rs.34,000/- p.a., considering the daily wages of a labourer in the State of Punjab at the relevant time. Considering the number of his dependent family members, 1/4th of the amount was deducted towards personal and living expenses of the deceased. Annual dependency of claimants was worked out to Rs.25,550/-. Properly applying multiplier of 13, compensation payable was found to be Rs.3,31,500/- and then a sum of Rs.13,500/- was awarded for loss of estate and funeral expenses. Though, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, the claimants could be granted a sum of Rs.70,000/- under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses. The total compensation was, thus, worked out to Rs.3,45,000/-, which is fair, reasonable and adequate and cannot be said to be on higher side.

RW1 Neeraj Kumar, Clerk, DTO Office, Muktsar, had brought the summoned record, stating that Jaswant Singh-respondent No.1 was issued license No.58815 w.e.f. 08.08.1988 to 07.08.1991, copy Ex.R1. That license was renewed w.e.f. 01.10.1991 to 30.09.1994, copy Ex.R2. It was further renewed vide No.10517 w.e.f 05.05.2004 to 04.04.2007, copy Ex.R3 and last time, it was renewed, vide No.5623 w.e.f. 11.10.2007 to 10.10.2010, copy Ex.R4; that the accident having taken place on 10.09.2007; obviously, respondent No.1 was not holding a valid driving license on that day and term of his license has already expired. Therefore, as per the conditions agreed upon between the insurance company and the insured, the insured vehicle was to be driven by a person possessing a legal and valid driving license. However, this condition was obviously violated. As such, recovery rights had been granted to the insurance company, since, qua third party, insurance company was certainly liable but it could recover the amount from the insured and the driver for the reason that the driver of the insured vehicle was not possessing a valid and effective driving license at the time of accident.

Learned counsel for the appellant-insured has argued that when the driver was in possession of a driving license, which had expired, that is not taken to be breach of insurance policy. In support of such contention, he has relied upon judgment **Francisca Luiza Rocha & Ors. Vs. K. Valarmathi & Ors. 2018(1) RCR (Civil) 409** by the Apex Court, wherein it was observed that when the driver was having a expired driving license, that by itself does not constitute breach of insurance policy.

Learned counsel for respondent No.3-insurance company has rebutted such contention of learned counsel for the appellant, pointing out that, that in the judgment itself, recovery rights had been granted to the insurance company.

After hearing learned counsel for the parties, I find that the authority referred to by learned counsel for the appellant does not help him, since therein also though, it was observed that the insurance company would be liable to satisfy the award but thereafter, could seek recovery, if so advised from the owner of the vehicle.

As regards the other authority referred to **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004 AIR SCW 663**, by the Apex Court, in that very judgment, it was observed that liability of insurance company to satisfy the decree at the first instance is statutory and it cannot be shaken of only by saying that at the relevant point of time, the vehicle was driven by person having no license, though, it is opened to insurance company to recover the entire amount paid to third party on behalf of insured. Therefore, qua the third party, insurance company can certainly not taken plea of the driver not possessing a valid and effective driving license at the time of accident and therefore, deny its liability to pay the compensation to the third party, though, it can recover the amount from the insured for the said reason.

Next authority **United India Insurance Company Ltd. Vs. Shanti Devi and others, 2008(3) RCR (Civil) 541** by a single judge of this Court is not helpful to the appellant, since that basically dealt with a driver possessing a fake driving license and it was observed that the insurance company is not only to prove the fact that license was fake but also to establish that the owner had the knowledge of the fact of that fact. Here, the situation is entire different. The Tribunal was fully justified in granting the recovery rights to the insurance company and no fault can be found with such direction issued by the Tribunal.

There is no merit in the appeal. The same stands dismissed.

18.11.2019 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No