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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.1162 of 2015 (O&M)
Date of Decision : 10.04.2019

Sarjeet Singh

Appellant

Versus

Bimla Devi and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.S. Khurana, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate
for respondent No.2-Insurance Company.

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<u>AVNEESH JHINGAN, J (Oral)</u>

The award dated 19.11.2014 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] has been assailed by the owner of Tractor bearing registration No. HR-76A-5295 [hereinafter referred to as 'offending vehicle']. Challenge is to recovery rights granted to the insurer of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 14.08.2013, Manit Kumar alongwith his cousin was travelling on motorcycle bearing registration No. HR-76A-6383. On the way, the motorcycle was hit by the offending vehicle, due to the impact, Manit Kumar received grievous injuries on head. He was taken to Aditya Hospital, Rewari, thereafter shifted to Medanta Hospital from where he was referred to Safdarjang Hospital, New Delhi. He succumbed to the injuries on 06.09.2013. FIR No.240 of 2013 was registered at Police Station Farukh Nagar, Gurgaon.

In the claim petition filed by the legal heirs of Manit Kumar, the Tribunal assessed his monthly income as ₹5,000/-; 50% future prospects were awarded; ½ deduction for self-expenses was made and multiplier of '18' was applied. The Tribunal awarded compensation of ₹13,68,983/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for funeral expenses; ₹1,00,000/- for loss of love and affection and ₹4,33,983/- towards medical bills. The Tribunal held that the Driving Licence produced was not genuine and granted insurer with the right to recover the compensation from owner and driver of the offending vehicle.

Learned counsel for the owner contends that the Driving Licence was exhibited before the Tribunal, the same was not verified. Neither any official of the Licensing Authority nor any record was produced by the insurer. It is submitted that the Tribunal erred in awarding recovery rights.

With the appeal, the appellant has annexed information dated 14.01.2015, received under Right to Information Act, 2005, providing information that the Licence was verified and found genuine as per office records. His grievance is that recovery rights granted should be set aside.

Learned counsel for the insurer argues that in order to prove that the Driving Licence was fake, driver of the offending vehicle was examined. Reliance is placed on the portion of statement where driver deposed that his brother was residing in Nagaland but he was not aware at which place in Nagaland, his brother was residing. The argument raised is that as stated by driver, he went to Nagaland 15-16 years ago, whereas Driving Licence was issued in 2011 and accident was of 2013.

From the perusal of file, it is evident that on 14.07.2017 learned counsel for the insurer sought time for verifying the Driving Licence. After almost 1½ years, no verification has been done.

A pin-pointed issue to be decided in the present case that "*the onus cast upon the insurer to prove that Licence produced is fake*", can be discharged by mere cross-examination of driver of the offending vehicle?

The answer in the given set of facts is 'No'.

The Driving Licence was exhibited before the Tribunal but no official was called for, no record was summoned. The casual approach of the insurer was evident that even no investigator was appointed by the Insurance Company to verify the genuineness of the Licence.

The Supreme Court in ***National Insurance Co. Ltd.***

Vs. Swaran Singh and others, (2004) AIR (SC) 1531, held as under:-

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"The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish

the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(emphasis supplied)

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The Supreme Court held that in order to avoid liability, the defences are available to the insurer but the burden to prove the same is upon the insurer.

In the present case, there was not even an endeavour to discharge the onus. The casualness with which the insurer is dealing with public funds is evident from the approach adopted during the claim proceedings and thereafter in the present appeal. Inspite of there being period of about 1½ years being there, no steps were taken for verification of Driving Licence.

There was no requirement for the owner of the offending vehicle to prove the genuineness of the Driving Licence, yet to establish the *bona fide*, information under RTI Act, was sought and same is annexed with the present appeal. As per annexure, the Licence was verified and found genuine.

Learned counsel for the insurer was not able to rebut the same.

At this stage, learned counsel for the insurer placed reliance upon the decision of this Court in case of ***Manjit Kaur Vs. H.S. Atwal c/o Chandigarh Gas Co., Sector 17-C, Chandigarh and others, 2013(1) PLR 267.*** The reliance does not enhance the case. In that case, the issue was that where the Driving Licence was issued from far off places, instead of summoning witness and record, Local Commissioner can be appointed to verify the genuineness of the Driving Licence. Counsel for the insurer was not able to show that any Local Commissioner was appointed in the present case. The insurer failed to establish that Licence produced was fake. The recovery rights granted to the insurer cannot be sustained.

The award dated 19.11.2014 is modified to the extent that driver, owner and insurer of the offending vehicle are jointly and severally liable to pay the compensation.

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

April 10, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes