IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3721-2013(O&M)
Date of decision:-19.7.2019

M/s Transport Corporation of India Ltd.
...Appellant

Versus

Smt.Santosh Kumari and others
...Respondents

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

Present: Mr.Harshid Singh, Advocate for
Mr.V.P. Arora, Advocate
for the appellant.

Mr.Rajneesh Malhotra, Advocate
for the respondent – insurance company.

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H.S. MADAAN, J.

Smt.Santosh Kumari aged about 39 years – wife, Ms.Jagdish Kaur, aged about 17 years – minor daughter, Master Purshottam Lal, aged about 16 years and Master Dinesh Kumar, aged about 11 years – minor sons of Haripal, an unfortunate victim of a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Kailash Chandra – driver, M/s Transport Corporation of India Ltd., Faridabad – owner and M/s National Insurance Company Ltd. - insurer of truck trailer having registration No.HR38M-5997 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.50 lacs alongwith interest.

As per the case of the petitioners/claimants, on 14.7.2008,

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Haripal was driving scooter bearing registration No.PB-07Q-1075 on which Manjeet Singh was pillion rider; that they were coming from Chamiyarpur going towards Mahilpur; that at about 10:00 p.m. when they reached near petrol pump of Vicky, within the area of village Jiyan, on Chamiyarpur to Mahilpur link road, then the offending vehicle was standing on the metaled road loaded with Sonalika tractors with its front side towards Mahilpur side and it was parked in a negligent manner without putting the parking lights on or without any reflector or indicator or placing anything near and around the offending vehicle to indicate to the road users, that it was standing there; that due to the lights of the vehicles coming from the opposite side, Haripal could not notice the offending vehicle standing on the road, as such his scooter struck on its backside; resultantly both the riders fell down from the scooter on the road and suffered multiple injuries; that Haripal succumbed to the injuries at the spot and the scooter was badly damaged.

On notice all the three respondents appeared and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 1.3.2012, learned Motor Accidents Claims Tribunal, Kapurthala allowed the claim petition and awarded compensation of Rs.8,00,000/- to the claimants along with interest @ 9% per annum from the date of filing of the petition till the realization of the entire amount, payable by all the respondents jointly and severally. However, in view of the observations that the offending vehicle was being plied without fitness certificate on the date of accident, which

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was against the condition of the insurance policy, the respondent No.3 – insurance company was given recovery rights from respondents No.1 and 2.

Such award left the respondent No.2 – owner of the offending vehicle aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Only respondent No.6 – insurance company put in appearance through counsel to offer a contest.

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

The Tribunal keeping in view the facts and circumstances of the case and evidence available on the record, had found that respondent No.1 – Kailash Chandra was responsible for the accident by his rash and negligent act of parking the offending vehicle on the road without putting the parking lights on, without there being any reflector or without any indication showing that the said vehicle was parked there. The finding has been correctly given and no interference therewith is called for.

Similarly, the Tribunal has decided issue No.2 holding that after getting verification, it has been found by the respondent – insurance company that Kailash Chandra respondent No.1 – driver of the offending vehicle was holding a valid and effective driving licence at the time of accident. No interference with such finding is required.

As far as issue No.3 is concerned, the Tribunal considering the record brought by RW1 Sh.Narinder Kumar, Clerk, Licensing Authority, Motor Vehicle Inspector, Faridabad has observed that fitness

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certificate of the offending vehicle was valid from 12.4.2006 to 11.4.2008 on the date of accident i.e. 14.7.2008, no certificate of fitness was given to said offending vehicle, thereby giving recovery rights to the respondent – insurance company. However, during the pendency of appeal, the appellant has moved an application for placing on record letter and endorsement, which is being opposed by the respondent – insurance company. Nevertheless keeping in view the facts and circumstances of the case, even non-possession of fitness certificate qua the offending vehicle cannot be taken to be violation of terms and conditions of the insurance policy, for the reason that the offending vehicle was stationary, when the accident had taken place and was not being plied on the road. The accident had not taken place on account of any mechanical defect in the offending vehicle. Therefore, insurance company could not be absolved of its liability for the reason that the offending vehicle was not having a fitness certificate at the relevant time.

Learned counsel for the appellant has referred to judgment by Co-ordinate Bench of this Court i.e. ***Charanjit Singh and others Versus Harish Kumar Sachdeva and others, 2018(4) RCR(Civil) 993***, wherein in para No.13 it has been observed as under:

> *13. Counsel for the insurer has failed to convince this Court as to how non-possessing of a fitness certificate is covered within the purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149(2) of the Act. In absence of legislature providing non-possessing of a fitness certificate to be a ground to defend action by the insurer, it is*

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> *difficult to sustain findings of the Tribunal that the insurer is entitled to recovery right against the insured for his failure to produce the fitness certificate. That being so, findings recorded by the Tribunal giving recovery right in favour of the insurer are liable to be set aside and ordered accordingly. Resultantly, the insurer shall be liable to pay compensation to the claimants by way of indemnification of the insured in discharge of its obligation under the contract of insurance without any recovery right against the insured.*

Similar is the position in the present case. Therefore, the Tribunal fell in error in giving recovery rights to the insurance company. Notice of motion had been issued to insurance company only, therefore, the claimants are not appearing in this Court and no plea can be allowed to be raised on behalf of the appellant with regard to the quantum of compensation. As such finding recorded by the Tribunal on issue No.3 is modified accordingly and similarly in relief clause the observations with regard to recovery rights given to the respondent – insurance company from respondents No.1 and 2 stand withdrawn.

The appeal stands allowed accordingly.

19.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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