IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213

FAO No.1620 of 2015 (O&M)
Date of decision: 21.05.2019

New India Assurance Co. Ltd. ... Appellant

Versus

Balwan and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Gupta, Advocate for the appellant.
None for respondent No.1.
Mr. Shiv Kumar, Advocate for respondent No.3.
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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 27.10.2014 passed by the Motor Accidents Claims Tribunal, Sonepat whereby compensation has been assessed in respect of injuries sustained by Balwan in a motor vehicular accident that took place on 24.10.2012.

Counsel for the insurance company would inform that the appeal has been preferred primarily to challenge findings of the Tribunal on issue No.4 pertaining to driving licence. It is argued that neither the driver nor the registered owner of tempo No.JH-05-A-8553/H/12 (offending vehicle) produced copy of driving licence as they were ex parte, thus, the insurance company has been deprived of an opportunity to seek necessary verification of driving licence and prove that licence, if any, possessed by Bhim Paswan is not valid or effective.

Counsel for respondent No.3 has not disputed that respondent No.3 herein and arrayed as respondent No.2 before the Tribunal was ex parte, therefore, no documents were produced before the Tribunal either by the driver or the insured of the offending vehicle.

Hon'ble the Supreme Court in **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425**, in para 11 of the judgment has held, reads thus:-

> The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd.

> VS. Swarn Singh and others, Manu/SC/0021/2004, has noticed the defences available to the Insurance Company under Section 149 (2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.

Since the registered owner failed to discharge its primary obligation either to produce copy of driving licence, if any, possessed by Bhim Paswan or supply its particulars to the insurance company, the Tribunal has seriously erred by rejecting plea of the insurance company. In the given circumstances, it would be in the fitness of things that findings of the Tribunal on issue No.4 are set aside and the matter is remitted to the

Tribunal for deciding the said issue afresh on the basis of materials already on record and additional evidence to be adduced by the insurance company subsequent to respondent No.3 producing copy of driving licence or supplying its particulars to the insurance company. In case, the insured fails to supply a copy of driving licence or its particulars before the Tribunal, the Tribunal shall be at liberty to dispose of the said issue in the light of judgment in **Pappu and others's case (supra)** and additional evidence, if any, adduced by the insurance company.

In view of what has been discussed hereinbefore, the appeal is partly allowed; findings on issue No.4 are set aside and the matter is remitted to the Tribunal for decision of issue No.4 afresh in the terms indicated hereinbefore. For deciding issue No.4, the Tribunal shall not call upon any other party to the claim application as this is a dispute *inter se* the insurer and insured. Parties through their counsel are directed to appear before the Tribunal on 10.07.2019.

21.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No