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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2802-2015(O&M)
Date of Decision : 13.02.2019

New India Assurance Company Limited ...Appellant

vs.

Gurjot Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Paul S.Saini, Advocate
for the appellant.

Mr. B.S.Bedi, Advocate
for respondents No. 2 and 3.
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Avneesh Jhingan, J. ***(Oral)***

The award dated 04.02.2015 passed by the Motor Accident Claims Tribunal, Faridkot (for short 'the Tribunal') has been assailed by the Insurer of the Canter bearing registration No. CH-03J-8781 (for short 'the offending vehicle').

In the present appeal, the grievance raised is that the driver of the offending vehicle was not holding a valid driving licence at the time of accident and the recovery rights should be granted to the insurer.

The facts emanating from the record are that on 01.08.2009, Gurjot Singh was riding a motorcycle when he reached Green Dhaba, Kotakpura, his motorcycle was hit by the offending vehicle. He sustained injuries in the said accident. He was shifted to Civil Hospital, Kotkapura from where he was referred to GGS Medical College and

Hospital, Faridkot from where he was taken to Trauma Centre Multi Specialist and Super Specialty Centre, Ludhiana.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle.

The Insurer during the proceedings contended that the driving licence was issued on 17.09.2003 and was valid upto 16.09.2006 thereafter the driving licence was renewed on 08.10.2009 and was valid upto 07.10.2012. There was no renewal in the intermediate period in which accident took place. The Tribunal inspite of objection raised, held that the insurer, driver and owner would be held liable jointly and severally to pay compensation. The Tribunal awarded a sum of ₹ 2,05,290/- along with conditional interest at the rate of 9% per annum to the claimants.

Learned counsel for the appellant contends that there was no renewal of driving licence from 17.09.2006 to 07.10.2009, the accident occurred on 01.08.2009. Hence, there is no valid driving licence at the time of accident. Hence, recovery rights were awarded to the Insurer.

Learned counsel for respondents No. 2 and 3 i.e. the owner and driver of the offending vehicle contends that the valid driving licence was valid upto 2006 itself establishes that the driver knew how to drive the vehicle and hence, no recovery rights should be granted. He further states that thereafter also, the licence was renewed even though after period of three years.

Before dealing with the issue involved in the appeal, it is pertinent to mention here that learned counsel for respondents No. 2 & 3 is not able to dispute the fact that the driving licence was not renewed in the intervening period i.e from 17.09.2006 to 07.10.2009.

Section 15 (1) of the Act which deals with renewal of driving licence is reproduced below:-

> *"Section 15 - Renewal of driving licences - (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry :*
>
> *Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal :*
>
> *Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in Sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."*

It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver will be held to be possessing a valid first licence. The first proviso appended to Sub-

Section (1) of Section 15 of the Act, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry.

The Supreme Court in the case of ***Ram Babu Tiwari vs. United Indian Insurance Company Limited and others; (2008) 8 SCC 165*** has held as under:

> *13. The question as to whether the owner of a vehicle had taken care to inform himself as to whether the driver entrusted to drive the vehicle was having a licence or not is essentially a question fact. However, in this case, it stands admitted that as on the date of accident, namely, on 27.1.1996, the driver did not hold any licence. Furthermore, it is beyond dispute that he had a licence only for one year and for about 3 years thereafter, he failed and neglected to renew his licence. His licence was renewed only on and from 7.2.1996.*
>
> *Sub-section (2) of section 149 of the act provides for defences available to the insurer to avoid liability under the act. Section 149(2) of the act is reproduced below :*
>
> "*MOTOR VEHICLES ACT, 1988 Section 149 - Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.*
>
> *X XXXXXXXXXXXX*
>
> *(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so*

long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) <u>a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by</u> any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

X XXXXXXXXXXXX (emphasis supplied)

The contention of the learned counsel for respondents No. 2 and 3 is against this specific provision of Section 15 (1) of the Act. There was no valid driving licence on the date of accident.

The award is modified to the extent that the owner and driver would be jointly and severally liable to pay compensation. The Insurer will have right to recover the amount from the owner and the driver of the offending vehicle.

Disposed of accordingly.

13th February, 2019 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*