215 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1798 of 2016 (O&M)
Date of decision : November 01, 2019

M/s Jujhar Constructions and Travels Pvt. Ltd. .....Appellant

Versus

Smt. Ishwari Karki and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Surinder Gandhi, Advocate
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent No. 3.

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LISA GILL, J.

Present appeal has been filed challenging award dated 10.12.2014 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal') to the extent that liability has been fastened upon the appellant i.e. owner of the offending vehicle.

The claimants in this case filed a petition under Section 166 of the Motor Vehicles Act claiming compensation on account of death of Karan Bahadur. Learned Tribunal concluded that Karan Bahadur died in the accident which took place on 17.12.2009 due to rash and negligent driving of the offending Trolla bearing registration No. HR-55E-6671 by its driver. The offending vehicle was admittedly owned by the present appellant and validly insured with the respondent - insurance company. A photocopy of the driving licence of the respondent – driver (mark B) and route permit (mark C) was placed on record.

Learned Tribunal observed that though it was the duty of the insurance company to prove that the respondent – driver was not holding a valid and effective driving licence on the date of accident i.e. 17.12.2009, the certified copy of the driving licence or the original was not even produced by the owner or driver, so as to enable the insurance company to verify the same. In this view of the matter, learned Tribunal directed the insurance company to pay the compensation amount with a right to recover the same from the owner and the driver. The present appeal has been filed by the owner of the offending vehicle, being aggrieved of the right to recover the awarded amount from him being afforded to the insurance company.

Learned counsel for the appellant – owner argues that learned Tribunal has wrongly ignored the fact that a photocopy of the driving licence of the respondent – driver was duly tendered in evidence (mark B). The original driving licence of the respondent – driver stood impounded by the police and was attached with the file of the criminal case registered against the respondent – driver. It was the duty of the insurance company to have proved that the respondent – driver was not holding a valid and effective driving licence. To have foisted the liability upon the owner only on the ground that the certified copy of the driving licence was not placed on record is patently incorrect. It is further submitted that the appellant by way of abundant caution has filed an application alongwith this appeal for adducing additional evidence by way of driving licence. During the pendency of this appeal, the original driving licence was duly furnished by the appellant and the same has been verified to be a genuine and valid one. In this view of the matter, the present appeal be accepted and the insurance company be held liable to indemnify the appellant and pay the compensation amount.

Learned counsel for the respondent - insurance company submits that as per e-mail dated 05.09.2019, received from G. Krishan, Deputy Manager, Chandigarh Regional Office of insurance company, the driving licence in question held by the respondent – driver has been found to be genuine. A copy of communication dated 05.09.2019 in this respect is available on record.

Having heard learned counsel for the parties, it is evident that CM No. 6895-CII of 2016 under Order 41 Rule 27 read with Section 151 CPC was filed alongwith this appeal. Reply thereto was filed by the insurance company. The original driving licence was furnished by the appellant during the pendency of this appeal. The said driving licence has been verified by the insurance company to be genuine and valid. The said application has been disposed of by a separate order of even date.

It is not in dispute that the offending vehicle was otherwise validly insured with the respondent - insurance company and it had a valid route permit etc. and was authorised to be plied on the roads.

Keeping in view the facts and circumstances as noted above, it is apparent that the insurance company does not have a right to recover the awarded amount from the owner and driver of the offending vehicle.

No other argument has been raised.

In this view of the matter, impugned award dated 10.12.2014 is set aside to the extent that recovery rights have been afforded to the insurance company. Consequently, the insurance company is held liable to indemnify the insured.

Accordingly, the present appeal is allowed in terms aforesaid.

(Lisa Gill)
Judge

November 01, 2019
rts

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