

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4460-2014(O&M)

Date of decision:-29.5.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Jarnail Singh and others

...Respondents

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

Present: Mr.D.K. Prajapati, Advocate
for the appellant.

Mr.D.C. Mittal, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case as per version of the petitioner/claimant are that on 19.2.2011, the petitioner/claimant Jarnail Singh son of Sh.Sarwan Singh, aged 28 years, resident of Mill Gate Road, Tibba Dana Sher, Hisar was on duty as driver on truck bearing No.HR-39/8555 owned by Tirath Dass son of Udham Singh, resident of Hisar; that iron rods/*saria* were loaded in the said truck from Mandi Gobindgarh and the truck started its journey for going to Dhuri. As per version of the petitioner/claimant he was driving the truck at a moderate speed on correct side of the road observing the traffic rules; that Sh.Tirath Dass, owner of the truck was also following him in his car; that at about 9:45 p.m. when the truck reached near KRBL factory in the area of village

Ashod, then a tanker bearing registration No.PB-13-T/9702 (hereinafter referred to as the offending vehicle) came from the opposite side being driven by respondent No.1 - Salinder Singh at a high speed rashly, negligently and hit the truck being driven by the petitioner/claimant, resultantly the petitioner/claimant suffered multiple injuries; he was shifted to Civil Hospital, Malerkotla; that an FIR No.32 dated 21.2.2011 for the offences under Sections 279, 337 and 427 IPC was registered with Police Station Sadar, Dhuri with regard to the accident; that after giving first aid to the petitioner/claimant, he was shifted to Daya Nand Medical College, Ludhiana, where he was medico-legally examined and operated upon; thereafter he was shifted to N.C. Jindal, Hospital, Hisar and he remained admitted there from 21.2.2011 to 12.3.2011; that he was operated upon and his right leg was amputated; that the petitioner/claimant was again admitted in the hospital on 7.4.2011 and discharged on 20.4.2011; that a sum of Rs.5,00,000/- was spent on his treatment as well as on transportation, special diet and in engaging an attendant; that the petitioner has suffered a lot of pain and sufferings as well as mental agony and is still under treatment. According to the petitioner/claimant, he was aged about 28 years at the time of accident and being a driver used to earn Rs.8,000/- per month as salary besides daily perks and after the accident he has become permanently disabled and is unable to do his daily pursuits.

Petitioner/claimant – Jarnail Singh had brought a petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Salinder Singh – driver, Som Dutt, Builder Private

Limited, Malikpur – owner and New India Assurance Company Limited – insurer of the offending vehicle, claiming compensation to be tune of Rs.50 lakhs.

Notice of the claim petition was given to the respondents. Respondent No.1 failed to appear despite service, as such was proceeded against *ex parte*. Whereas respondents No.2 and 3 had put in appearance and filed separate written statements contesting the claim petition.

In the written statement filed on behalf of respondent No.2, he took up various preliminary objections contending that no cause of action had arisen to the claimant to bring the petition; that the claimant did not have any locus stand to file the claim petition; that the claim petition was not maintainable and the same was bad for mis-joinder and non-joinder of necessary parties. On merits, such respondent controverted the material assertions in the claim petition with regard to time, date, place and manner of the accident, age and income of petitioner, injuries suffered by him and expenses incurred on the treatment and transportation etc. According to such respondent, no accident had taken place with the offending vehicle but it had been falsely involved and a false case was got registered against respondent No.1. However, according to such respondent, the vehicle in question was insured with respondent No.3 at the relevant time, therefore, respondent No.3 was liable to indemnify the insured. Refuting the remaining allegations, such respondent prayed for dismissal of the claim petition.

In the written statement submitted on behalf of respondent No.3, it had also opposed the material assertions in the claim petition; in

addition coming up with a plea that the driver of the offending vehicle was not having a valid and effective driving licence, as such the insurance company was not liable to indemnify the owner, who also had not given any information to it regarding the accident and violated the provisions of Section 134(c) of the Act. Such respondent also prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident in question resulting into injuries to claimant took place due to rash and negligent driving of vehicle No.PB-13T/9702 by respondent No.1 as alleged? OPP.
2. If issue No.1 is proved, whether claimant is entitled for compensation, from whom and to what extent? OPP.
3. Whether the respondent No.1 was not holding any valid and effective driving licence at the time of accident? OPR3.
4. Whether there was a violation of the terms and conditions of the insurance policy and respondent No.3 insurance company is not liable to pay any compensation? OPR3.
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the petitioner had examined Dr.M.K.Garg as PW1, Sh.Satyawan, Incharge, R.K. Viklang Kendra as PW2, Ms.Minakshi as PW3, Sh.Sajjan Verma as PW4, Dr.Vikram Jain as PW5, whereas he got his statement recorded as PW6.

On the other hand, respondent No.2 tendered in evidence copy of driving licence of respondent No.1 as Ex.R1, route permit as Ex.R2 and RC as Ex.R3. Whereas respondent No.3 tendered in evidence insurance policy as Ex.R4.

After hearing arguments, the Tribunal decided issue No.1 in favour of petitioner, issue No.2 in favour of the petitioner and issues No.3 and 4 against respondent No.3. Resultantly while allowing the petition vide award dated 20.2.2014, the Tribunal granted compensation of Rs.17,12,500/- along with interest @ 9% per annum from the date of filing of the petition till realization. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted and the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Respondents No.1 and 2 were served. However, there was no representation on their behalf, as such, they were proceeded against ex parte. Respondent No.3 appeared through counsel.

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

It may be mentioned here that the appellant has filed an application under Order 41 Rule 27 CPC read with Section 151 CPC for adducing additional evidence in appeal stating that the appellant – insurance company wants to prove in evidence report of driving licence of Salinder Singh as well as accident information report, which would go a

long way to show that driver of the offending vehicle was holding a fake driving licence on the date of alleged accident and it has come in the report of Licensing Authority, Fatehpur that the licence bearing No.10283/F/05 was not issued in the name of Salinder Singh son of Sh.Sukhnidhan Singh. According to the applicant/appellant, these documents are very material and essential in order to do substantial justice and their non-production earlier was not intentional or deliberate. Therefore, the application be accepted.

The application is being resisted by the appearing respondent vehemently praying for its dismissal.

It may be mentioned here that the claim petition in question was filed before the Tribunal on 8.6.2011, notice of which was given to respondents; only respondents No.2 and 3 had put in appearance; respondent No.3 had filed detailed written statement opposing the claim petition taking a specific plea that since respondent No.1 – driver of the offending vehicle was not holding a legal and valid driving licence, therefore, the terms and conditions of the insurance policy were violated, as such the insurance company was not liable to pay compensation. Further, on 12.9.2012 issues on merits had been framed. Issues No.3 and 4 being as under:

3. *Whether the respondent No.1 was not holding any valid and effective driving licence at the time of accident? OPR3.*
4. *Whether there was a violation of the terms and conditions of the insurance policy and respondent No.3 insurance company is not liable to pay any compensation? OPR3.*

Thereafter, the claimant had adduced his evidence. When it came to turn of appearing respondent, no oral evidence was led, rather counsel representing respondent No.2 tendered in evidence copy of driving licence of respondent No.1 as Ex.R1, route permit as Ex.R2 and RC as Ex.R3 and closed the evidence. Whereas counsel for respondent No.3 tendered in evidence insurance policy as Ex.R4 and closed its evidence. Thereafter, after hearing arguments, the Tribunal had allowed the petition and passed an award. In that way, copy of driving licence of respondent No.1 was available with respondent No.3 – insurance company and it could very well have summoned the record from the issuing office to show that the licence in question was not genuine and was a fake one but it did not do that and rather counsel representing the insurance company had closed its evidence just after tendering insurance policy Ex.R4. The onus of proving issues No.3 and 4 was upon respondent No.3 – insurance company, which it had failed to discharge by bringing on record even an iota of evidence. It being so, filing application seeking permission to lead additional evidence cannot possibly succeed. Order 41 Rule 27 CPC deals with production of additional evidence in the Appellate Court. For ready reference the provision is reproduced as under:

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if— (a)the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or 1 [(aa)the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due

diligence, be produced by him at the time when the decree appealed against was passed, or]

(b)the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2)Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

The case of the appellant is not covered by the first eventuality since the Tribunal had certainly not refused to admit evidence, which is now sought to be produced. Regarding the second eventuality, that also does not come to rescue of the applicant/appellant since evidence now sought to be produced was very much within knowledge of appellant and it cannot be said that the same could not after the exercise of due diligence, be produced by it at the time when the award against it was passed. Coming to the third eventuality, though proposed evidence is certainly relevant to determine the liability of the insurance company but it is not of that type, the production of which would be essential and absolutely necessary for adjudication of the controversy.

Learned counsel for the appellant has referred to judgment passed by a Co-ordinate Bench of this Court i.e. **Dinesh Kumar and another Versus Roshni Devi & Others, 2010(2) RCR(Civil) 539** wherein dealing with a case of grant of compensation by Motor Accidents Claims Tribunal in a death case, the driver of the offending vehicle was not found to have valid driving licence, as such the insurer was exonerated from

liability. However, in appeal before the High Court, owner and driver sought to produce driving licence of driver by way of additional evidence; the prayer was allowed holding that valid driving licence being material piece of evidence was necessary for just and proper adjudication of case and would be helpful to the Court to effectively decide the dispute between the parties. Therefore, the licence was allowed to be produced. It was got verified by the insurance company and licence was found valid, for that reason the insurance company was held to be liable.

Here the facts of the case are entirely different. At a very belatedly stage, the insurance company wants to avoid its liability to pay compensation coming up with a plea that respondent No.1 was not having a valid and effective driving licence at the time of accident, which was available to it and it had ample opportunity to lead evidence in that regard, which it failed to do. In case the application is allowed, it would result in putting the clock back leading to a *de novo* trial depriving the claimant, who had suffered injuries in the motor vehicular accident on 19.2.2011 of the compensation awarded to him by the Tribunal more than five years back.

Furthermore, the insurance company wants to prove the report submitted by an Advocate with regard to legality of the licence and not report given by the issuing office. No official from the office is sought to be examined. If we see the Accident Information Report Ex.A-2 against column No.3, it is mentioned therein that the office had issued licence in the name of Shailender Singh son of Sh.Sukhnidhan Singh, resident of village Shahbazpur, P.O. Joniha, District Fatehpur. The particulars of

respondent No.1 including his parentage, residential address are identical and there appears to be some difference in spelling of his name. Taking advantage of that the licence cannot possibly be termed as fake. Therefore, the application being without merits stands dismissed.

Now coming to the merits of the case, the Tribunal looking into the oral and documentary evidence including statement of claimant Jarnail Singh, who provided the ocular version of the accident deposing in consonance with his case given in the claim petition, remaining unshattered in his cross-examination, taking into consideration copy of FIR Ex.P70 wherein registration number of the offending vehicle, name of driver and manner of accident had been duly incorporated; in absence of any rebuttal evidence more particularly failure of respondent No.1 to appear and depose on oath that he was not responsible for the accident by his rash and negligent driving of the offending vehicle, had arrived at the conclusion that the accident in question resulting into injuries to claimant took place due to rash and negligent driving of the offending vehicle by respondent No.1. As discussed in detail, for want of evidence, the Tribunal had decided issues No.3 and 4 against respondent No.3 – insurance company and as regards issue No.2, the compensation was assessed as per the settled legal parameters. The total compensation of Rs.17,12,500/- was awarded keeping in view the extent and nature of injuries, the amount spent by the petitioner/claimant on his medical treatment, his hospitalization, number of operations undergone by him, his inability to work for a considerable time and the fact that he had suffered 75% disability as a result of amputation of right knee joint and is unable

to walk property or drive a truck had awarded, which can certainly be not said to be on higher side.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

Finding no merit in the appeal, the same stands dismissed accordingly.

29.5.2019

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**