IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 4801 of 2014 (O&M)
Date of Decision: 17.12.2019

Suresh Kumar Gupta and others

......Appellants.

Versus

Vijay Kumar and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.D.S.Adlakha, Advocate
for the appellants.

Ms. Monika Jhangra, Advocate
for Ms. Vandana Malhotra, Advocate
for respondent no.5.

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LISA GILL, J.

This appeal has been filed by the owner/his legal representatives, of the offending vehicle i.e., Canter bearing registration no. HR-58-5239.

Appellants, are aggrieved of the right of recovery afforded to the Insurance Company by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'Tribunal'), vide impugned award dated 15.04.2014.

Claimants-respondents, had filed a claim petition under Section 166 of the Motor Vehicle Act (for short 'act'), seeking compensation on account of death of Gulshan Kumar, in the motor vehicle accident which took place on 28.11.2011, due to the rash and negligent driving of the offending vehicle by respondent no.1-Nem Kumar. The offending vehicle, was admittedly owned by the appellant-Sumer Chand (since deceased) now being represented through his LRs.

Learned tribunal awarded a sum of ₹5,57,600/- as compensation to the claimants-respondents, the quantum of which is not under challenge in this appeal. The details thereof are not mentioned as the same are not necessary for the adjudication of this matter.

Learned tribunal, while considering the testimony of RW-2-Sunil Kumar, Licensing Clerk, Licensing Authority, Mathura (UP), concluded that the driving license held by the driver of the offending vehicle was fake. Thus, the driver not holding an effective and genuine driving license on the date of the accident, the Insurance Company, was afforded the right to recover the awarded amount from the appellant and the driver, jointly and severally.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants (owner/his legal representatives) vehemently argues that the appellant-owner, could not have been saddled with the liability nor the recovery rights afforded to the Insurance Company, for the reason that the appellant had taken due care and caution before engaging the services of the driver. It is further submitted that the owner is not expected to verify the driving license from the licensing authority, itself. There is thus no breach of the terms and conditions of the Insurance policy, which was otherwise valid. Therefore, it is prayed that this appeal be allowed.

Learned counsel for the Insurance Company, *per contra*, submits that recovery rights have been correctly afforded by the learned tribunal. Driving license of the driver of the offending vehicle has been proved to be fake. It is thus prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their assistance.

Sumer Chand, the registered owner of the offending vehicle, duly contested the matter before the learned tribunal. It is specifically stated that Sumer Chand, aged 85 years, at the relevant time, was unwell and therefore unable to depose himself. Surinder Kumar Gupta, son of Sumer Chand, was the special power of attorney holder of Sumer Chand, which is available on record as Ex.R.1. RW-1, specifically stated that the driver had been appointed by him about two years prior to the accident and at the time of appointment, RW-1 had himself inspected the driving license produced by the driver namely Nem Kumar. Thereafter, a test drive had been taken right up to Bilaspur. RW-1, stated that he himself had accompanied the driver to Bilaspur alongwith the consignment and had found the driver to be perfect in his driving and in possession of adequate driving skills. It is only thereafter that services of Nem Kumar were engaged. Learned counsel for the Insurance Company, it is to be noted, was unable to extract anything beneficial from the cross-examination of RW-1.

At this juncture, it is relevant to note that the Hon'ble Supreme Court in **National Insurance Company Limited versus Swaran Singh and others 2004 (3) SCC 297** held that mere absence or fake or invalid licence at the relevant time are not the defences available to an insurer against the insured or third parties. To avoid its liability towards the insured, the insurer company has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of the conditions of the policy. Burden to establish breach of policy is upon the insurer by leading cogent evidence on record. Evidence on record in the present case, clearly proves that the owner of the offending vehicle exercised due care and caution as required of him before engaging the services of the driver.

In the factual matrix of the case, learned tribunal has clearly erred in affording the right to recover the amount of compensation from the owner. Said finding is thus set aside. It is held that the appellant-owner/his legal representatives, have discharged the duty cast upon them and the insurance company is liable to indemnify the insured and is not entitled to recover the awarded amount from the appellants.

No other argument has been addressed.

Appeal is accordingly allowed.

[LISA GILL]
Judge

17.12.2019
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.