208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4925-2014
Date of Decision : 13.02.2019

Haryana Kashmir Transport Carrier ...Appellant

vs.

ICICI Lombard General Insurance Company Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Namit Khurana, Advocate
for the appellants.

Mr. M.B.Jain, Advocate &
Mr. Puneet Jain, Advocate
for respondent-Insurance Company.
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Avneesh Jhingan, J. *(Oral)*

The award dated 10.10.2013 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') has been assailed by the owner of the truck bearing registration No. HR-58A-3422 (for short 'the offending vehicle').

In the present appeal, the grievance raised is with regard to the recovery rights granted to the Insurer to recover the compensation amount from the appellant.

The facts emanating from the record are that on 05.04.2011, a motor vehicular accident occurred due to rash and negligent driving of the offending vehicle. The claimant sustained injuries in the said accident. FIR No. 38 dated 05.04.2011 was registered at Police Station, Chhachhrauli.

A claim petition was filed under Section 166 of the Motor Vehicle Vehicles Act (for short 'the Act'). The Tribunal awarded a sum of ₹ 59,574/- along with interest at the rate of 7.5% per annum. The Tribunal after considering the facts and appreciating the evidence adduced held that the driver of the offending vehicle was not holding valid driving licence on the date of the accident and the insurer was directed to make the payment to the claimant and right was granted to recover the amount along with interest from the owner of the offending vehicle.

Learned counsel for the appellant contends that the driver of the offending vehicle was having a driving licence which was valid upto 22.01.2010 and thereafter the said driving licence was renewed on 03.10.2011. The Tribunal erred in granting recovery rights to the insurer.

Learned counsel for the Insurer argues that the licence was renewed much later, i.e. after a time period of more than 01 year 9 months from the date of accident, there was no valid licence at the time of accident.

Heard learned counsel for the parties and perused the paper book and the relevant documents produced by them.

The contention raised by the learned counsel for the appellant lacks merits.

The driving licence of the driver of the offending vehicle was valid from 11.02.2007 to 22.01.2010. The accident took place on 05.04.2011. The driving licence was renewed thereafter from 03.10.2011 i.e almost after six months after the accident. The period between the expiry and the renewal of the driving licence was approximately 21 months. The subsequent renewal was much later and will not make the driving licence valid at the time of accident. Section 15 (1) of the Act deals with the renewal of the driving licence which 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 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 that 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 licensed, or by any person</u> 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 the appellant is against this specific provision of Section 15 (1) of the Act. It cannot be held that on date of accident the driver of the offending vehicle was having a valid driving licence.

In view of the above, the present appeal is dismissed.

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

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