

In the High Court of Punjab and Haryana at Chandigarh

FAO-3244-2016 (O&M)
Date of Decision: February 22, 2019

Ombir and another

... Appellants

Versus

SBI General Insurance Company Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ramesh Hooda, Advocate,
for the appellants.

Ms. Vandana Malhotra, Advocate,
for respondent no.1.

Ms. Sanya Sapra, Advocate,
for Mr. N.K. Malhotra, Advocate,
for respondents no. 2 to 6.

Avneesh Jhingan, J.

The award dated 12.10.2015 passed by the Motor Accident Claims Tribunal, Rohtak (for short “Tribunal”) has been assailed by driver and owner of vehicle bearing registration No. HR-63A/4756 (hereinafter referred to as the “offending vehicle”) being aggrieved of recovery rights granted to the insurer of the offending vehicle.

The brief facts of the case are that a motor vehicular accident took place on 11.09.2014, the said accident proved fatal for Jai Bhagwan. He was going on a motor-cycle bearing registration No. HR-12H/3323, on his way, the motor-cycle was struck by the offending vehicle, as a result of the accident, Jai Bhagwan had sustained grievous injuries and died at the spot.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”) was filed by the widow, children and mother of the deceased. The Tribunal after appreciating the evidence held that the accident was caused due to the rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹ 22,50,440/- along with interest @ 7.5% per annum. The Insurance Company was held liable to pay the compensation to the claimants, however, right to recover the compensation from driver and owner of the offending vehicle was granted. Aggrieved against the recovery rights, present appeal has been filed.

Learned counsel for the appellants contends that the driver of the offending vehicle was holding a valid driving licence and the same was produced before the Tribunal as Ex.R1. The licence was issued in the year 2010 and was valid upto 14.01.2016. The driver was authorized to drive motor-cycle, light motor vehicle, medium motor vehicle and heavy motor vehicle. The licence was issued by the Transport Commissioner, Nagaland. The contention raised is that the insurer produced no evidence to prove that the driving licence was fake, yet recovery rights have been granted.

On the other hand, learned counsel for the insurer argued that the driver of the offending vehicle was not a resident of Nagaland and a public notice had been issued on 01.08.2014 by the Transport Commissioner, Nagaland stating that all the driving licences were being issued on smart card through the national software “SARTHI” from 30.10.2009, hence, the driving licence produced was not valid.

Heard learned counsel for the parties and perused the paper book.

The contention raised by the appellants deserves acceptance.

The onus is cast upon the insurer to prove that the licence produced was not validly issued. Neither any record nor any official was produced before the Tribunal to discharge the onus that the driving licence was fake. The reliance on the public notice dated 01.08.2014 does not enhance the case of the insurer. The licence was issued in the year 2010 and was valid upto 14.01.2016. The Tribunal noted the contents of the public notice where it has been stated that where the driving licences were not issued on smart card the licence holders must report to the concerned office of the licencing authority to get issued driving licences on smart card before 01.12.2014. In the present case, the accident took place on 11.09.2014 i.e. prior to the last date as mentioned in the public notice.

In such circumstances, it cannot be said that there was violation of terms and conditions of the insurance policy and the driver of the offending vehicle was not holding a valid driving licence at the time of accident.

The award dated 12.10.2015 is modified to the extent that the owner, driver and insurer of the offending vehicle shall be jointly and severally liable to pay compensation.

Instant appeal is disposed of accordingly.

February 22, 2019
vkd

(Avneesh Jhingan)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No