IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5203 of 2015 (O&M)
Date of Decision: September 30, 2019

M/s. Megh Raj Phool Chand

...... Appellants(s)

Versus

Baljit Kaur and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rakesh Verma, Advocate
for the applicant-appellants.

None for respondents no.1 to 4.

Mr. R.N. Singal, Advocate
for respondent no.6.

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LISA GILL, J.

This appeal has been filed by the owner of the offending vehicle challenging the right of recovery afforded to the insurance company on the ground that the driving license held by the driver of the offending vehicle was not valid.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Hoshiar Singh, due to the injuries suffered by him in a motor vehicle accident, which took place on 07.01.2013, which is stated to have taken place due to the rash and negligent driving of the offending truck bearing registration No. PB-05-P-7802, by its driver Amar Kumar. The appellant-owner of the offending truck filed a written statement taking a specific plea that at the time of engaging the services of the respondent-driver he had seen his driving license and it is only after taking a test of his driving and finding him competent to drive the vehicle that his services were engaged. The registration certificate, photocopy of the route permit, photocopy of the fitness certificate and photocopy of the driving license of the driver alongwith the insurance policy were tendered.

Learned Tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending truck bearing registration No. PB-05-P-7802, by its driver. Learned Tribunal awarded a sum of Rs.24,68,000/- as compensation to the claimants. It was further concluded by the learned Tribunal that as per the verification reports Ex.R-1 and Ex.R-2, the driving license in question was not valid, therefore, insurance company was given the right to recover the amount of compensation from the present appellant and the driver. Aggrieved therefrom present appeal has been filed by the owner of the offending vehicle.

Learned counsel for the appellant vehemently argues that first and foremost no reliance can be placed upon the verification of the reports Ex.R-1 and Ex.R-2, which are merely reports submitted by Chander Mohan, Advocate/Investigator appointed by the insurance company to the effect that the driving license in question has not been issued or renewed by the Licensing Authority, Karnal, as per report dated 28.01.2015 received by the said Advocate/Investigator from the Licensing Authority-cum-Regional Transport Authority, Karnal. Furthermore, the appellant/owner had exercised all due care and caution as required before engaging the driver. Therefore, the insurance company is not entitled to recover the amount of compensation. It is, thus, prayed that this appeal be allowed.

Per contra, learned counsel for the insurance company submits that the insurance company has duly verified the validity of the driving license. Ex.R-1 and Ex.R-2 prove that the driving license is invalid. Furthermore, the owner of the offending vehicle did not even step in the witness box to substantiate the pleas taken in the written statement. Therefore, this appeal be dismissed.

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

A perusal of the record reveals that Ex. R-2 is a copy of the application dated 28.01.2015 submitted by Chander Mohan, Advocate before the Licensing Authority, Karnal for verification of the driving license in question. There is a note on the said application, purportedly by the Licensing Authority, Karnal to the effect that as per their record the said license has never been issued or renewed by this Authority. It is relevant to note that none from the concerned Department has been examined. Mere report of the Advocate/Investigator appointed by the insurance company cannot be relied upon in this regard. Reference can gainfully be made to the decision of a Division Bench of this Court in ***Surjan Kaur Vs. Anchal Singh 1997(3) RCR (Civil) 670***.

Furthermore, even if the driving license is held to be invalid, the appellant owner of the offending truck, cannot be held liable as he has duly discharged his responsibility by examining the license and ensuring the capability of the driver before engaging his services. In the written statement filed on behalf of the appellant-owner, it is clearly stated as under:-

> "*That prior to appointing respondent no.1 as driver such, owner, respondent no.2, had seen and examined his driving licence and, after taking the test of his driving, having found him competent to drive the vehicle and exercising other reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver.*"

There is indeed no evidence on record to rebut the said stand taken by the appellant-owner. It has been held by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Swaran Singh and others*** 2004 (3) SCC 297 that mere absence or fake or invalid licence at the relevant time are not defences available to the 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. There is no dispute that the offending vehicle was otherwise validly insured with the insurance company.

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 has discharged the duty cast upon him and the insurance company is liable to indemnify the insured.

No other argument has been addressed.

Appeal is accordingly allowed.

(LISA GILL)
JUDGE

September 30, 2019.
Sunil

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