IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 882 of 2015(O&M)

Date of Decision: February 26 , 2019.

A.S.K. Construction Company, Hoshiarpur ...... APPELLANT(s)

Versus

The Oriental Insurance Company Ltd. and others ...... RESPONDENT (s)

2. FAO No. 888 of 2015(O&M).

A.S.K. Construction Company, Hoshiarpur ...... APPELLANT(s)

Versus

The Oriental Insurance Company Ltd. and others ...... RESPONDENT (s)

3. FAO No. 889 of 2015(O&M).

A.S.K. Construction Company, Hoshiarpur ...... APPELLANT(s)

Versus

The Oriental Insurance Company Ltd. and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. M.S.Virdi, Advocate
for the appellant.

Mr. R.K.Bashamboo, Advocate
for respondent No.1.

Mr. Satvir Singh, Advocate for
Mr. A.S.Manaise, Advocate
for respondent No.3.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

FAO No. 882 of 2015 (A.S.K. Construction Company, Hoshiarpur v. The Oriental Insurance Company Ltd. and others), FAO No. 888 of 2015 (A.S.K. Construction Company, Hoshiarpur v. The Oriental Insurance Company Ltd. and others) and FAO No. 889 of 2015 (A.S.K.Construction Company, Hoshiarpur v. The Oriental Insurance Company Ltd. and others) are taken up for hearing together and are being decided by a common order as all these appeals emanate from three separate awards of even date i.e., 09.07.2013 passed by the learned Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as, the 'Tribunal') arising out of the same accident. All the abovenoted appeals have been filed by the owner of the offending vehicle challenging the right afforded to the Insurance company to recover the amount of compensation from it.

Brief facts necessary for the adjudication of the case are that, a motor vehicle accident took place on 16.07.2010 at about 10.30 p.m. due to the rash and negligent driving of the offending vehicle i.e., Tipper bearing registration No.PB-07X-2197 by its driver-Gurkulbir Singh. Three persons, namely, Paramjit Singh, Sham Lal and Moti Ram received injuries in this accident. Three claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') were preferred by the injured/claimants. All the three petitions were partly allowed by the learned Tribunal vide separate awards of even date i.e., 09.07.2013.

Learned Tribunal on consideration of the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle i.e., Tipper No.PB-07X-2197 by its driver-Gurkulbir Singh. The offending vehicle was owned by the present appellant. Various amounts of compensation, as per the facts and circumstances of each case, were awarded by the learned Tribunal. However, the detail thereof is not material for the adjudication of the present appeals as the quantum of compensation is not in question. Learned Tribunal while deciding the issue as to whether the driver of the offending vehicle was holding a valid and effective driving licence at the time of the accident or not, has held that the driving licence held by Gurkulbir Singh was proved to be fake, therefore, the Insurance company has been afforded the right to recover the amount of compensation from the insured after disbursement. Aggrieved therefrom, the present appeals have been filed by the appellant/owner of the offending vehicle.

Learned counsel for the appellant submits that due care and caution was exercised by him at the time of engaging the services of the driver-Gurkulbir Singh. The driving licence tendered by the driver was duly inspected and it is not expected from the owner to have cross-checked about its genuineness from the concerned District Transport office. In this situation, it is submitted that the learned Tribunal has grossly erred in affording the right to the Insurance company to recover the amount of compensation. It is thus prayed that this appeal be allowed.

Learned counsel for the Insurance company while refuting the averments as above, submits that once it is proved on record by RW1 Dalip Kumar, Junior Assistant, office of the District Transport Office, Hoshiarpur that the driving licence in question was a fake one, the Insurance company has been rightly afforded the right to recover the amount of compensation from the owner. It is thus prayed that all these appeals 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 RW2 Avtar Singh, the sole proprietor of the appellant-firm, specifically deposed before the learned Tribunal to the effect that before appointing Gurkulbir Singh as a driver, the driving licence held by Gurkulbir Singh, duly stamped by the District Transport Office, Hoshiarpur, was seen by him. RW2 Avtar Singh further satisfied himself about the driving skills of the respondent-driver. It is only thereafter, that Gurkulbir Singh was appointed. RW2 Avtar Singh specifically stated that he is in the business of transport since 2004, having 17 vehicles and due care and caution was taken by him before engaging the services of the driver.

Doubtlessly, RW1 Dalip Kumar, Junior Assistant from the office of District Transport Office, Hoshiarpur deposed that the driving licence as furnished by the driver was not genuine. However, the owner cannot be saddled with any kind of liability in the peculiar facts and circumstances of this case, wherein he has taken due care and caution before engaging the services of the driver.

Learned counsel for the Insurance company raised another argument, that the driving licence in question, in any case, was valid for driving scooter and car only. Therefore, due care and caution being exercised by the owner is not evident. However, learned counsel for respondent-Insurance company is unable to deny that Ex.R1 i.e., the driving licence furnished by the driver, which is stated to have been issued by the Licensing Authority, District Transport Office, Hoshiarpur, finds mention therein that the holder thereof is entitled to drive scooter/LTV/HTV. Therefore, obviously the licence furnished before the owner contained a specific endorsement of the driver being competent to drive Heavy Transport Vehicle (HTV). Thus, the argument raised by the learned counsel for the respondent-Insurance company has no substance. It has been held by the Hon'ble Supreme Court in **PEPSU Road Transport Corporation v. National Insurance Company Limited**, ***(2013) 10 SCC 217*** and **National Insurance Company Ltd. v. Swaran Singh and others**, ***2004 (2) RCR (Civil) 114*** that once the owner has taken proper steps to verify the driving skills of the driver and to satisfy himself regarding the driver having a valid Driving Licence, Insurance Company cannot be absolved of its liability to pay compensation.

No other argument has been raised.

Keeping in view the facts and circumstances as above, finding of the learned Tribunal affording the right to recover the amount of compensation to the Insurance company is set aside being unjustified and untenable. The Insurance company is held liable to indemnify the owner/insured and does not have any right to recover the awarded compensation from the insured.

All the three appeals are accordingly allowed.

(LISA GILL)
JUDGE

February 26 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No