

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5298 of 2017 (O&M)

Date of decision : 7.8.2019

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Inderpal

.....Appellant

vs.

Smt. Ombati and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by : Mr. Inderejit Sharma, Advocate for the appellant.

Mr. Suman Jain, Advocate for
respondent No.5.

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H. S. Madaan, J.

CM-16500-CII-2017

The appeal has been filed belatedly by 361 days. An application under Section 5 of the Limitation Act, seeking condonation of that delay has been moved. Inter alia, it is contended that the delay in filing the appeal was not intentional or willful.

The application is being opposed on behalf of the Insurance Company praying for its dismissal.

After hearing the counsel and going through the record, it comes out that though there is a substantial delay in filing of the appeal, but I find that the appellant deserves to be given a chance to

present his view point by pointing out alleged infirmities or illegalities in the award, rather than not affording any hearing to him for technical reasons. It is always desirable to decide a lis on merits rather than non-suiting a person while adopting a hyper-technical approach.

Therefore, the application is accepted. Delay in filing the appeal stands condoned.

Main case.

Briefly stated, facts of the case are that Smt. Ombati, aged 56 years, widow, Jagwati, aged 32 years daughter and Jagbir aged 30 years and Jormal aged 25 years- both sons of Mohan, who had perished in a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Inder Pal – driver/owner and Reliance General Insurance company, Mumbai – insurer of three-wheeler No. HR-73-9865 (hereinafter to be referred as 'the offending vehicle'), claiming compensation.

As per version of the claimants, on 9.12.2014, Mohan, deceased alongwith Meenu, Kishanwati, Rekha, Shakuntla and Dhakeli was returning to his village Chandhat in a three-wheeler bearing registration No. HR-73-9865 after attending condolence meeting of a relative at village Mohna. When they reached a bridge nearby, then the three-wheeler turned turtle and all the occupants thereof sustained multiple and grievous injuries. Thereafter, Mohan was got admitted in Gold Field Hospital, Chhainsa, where he was treated as an indoor patient but he succumbed to his injuries on

21.12.2014. An FIR No. 184 dated 21.12.2014 for offences under Sections 279, 304-A IPC was registered at police Station Chhainsa on the statement of eye-witness Sahab Singh with respect to the accident.

According to the claimants, they were fully dependent upon earnings of the deceased; that the deceased was aged about 60 years; that he was doing agricultural work besides milk vending and his monthly income was Rs.30,000/-; that the deceased after suffering injuries in the accident remained hospitalized w.e.f. 9.12.2014 to 21.12.2014 in Gold Field Hospital, Chhainsa and a sum of Rs. 5 lacs was spent on his treatment.

On being put to notice, both the respondents appeared and filed separate written statements, contesting the claim petition. In the written statement filed by respondent No.1 he had raised various preliminary objections with regard to maintainability of claim petition, any cause of action arising to the petitioner-claimants, petitioner-claimants being guilty of suppressing the material facts etc. On merits such respondent contended that the accident in question had not taken place due to rash and negligent driving of the three-wheeler by him. Rather, a false criminal case has been got registered against him by the claimants in connivance with the local police in order to extract compensation from him.

In the written statement filed on behalf of respondent No.2, several legal objections have been taken, contending that it was a case of hit and run and the claimants had falsely involved the vehicle in question in collusion with respondent No.1 and police in order to get

compensation. On merits, such respondent denied that any such accident had been caused by respondent No.1 by driving the vehicle in question. According to such respondent, it is not liable to pay any compensation since respondent No.1 was not holding a valid and effective driving license at the time of accident, thereby violating the term and conditions of the Insurance Policy. Refuting the remaining assertions, such respondent prayed for dismissal of the claim petition.

No rejoinder was filed by the petitioner-claimants.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After hearing the arguments, the claim petition was accepted and a compensation of Rs.5,53,500/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization, was granted to the claimants, payable by respondent No. 1 only, whereas claim petition against respondent No.2 was dismissed.

Respondent No.1 was dissatisfied with the award and has filed the present appeal.

Notice of the appeal was given to the respondents, but only respondent No.5 – insurance company has put in appearance.

The Tribunal in para Nos. 25 and 26 of the award has dealt with the aspect of respondent No.1 not possessing the legal and valid driving license at the time of accident. For ready reference, those paras are reproduced as under :-

“25. After giving thoughtful consideration to

the submissions so made by both the sides and after going through Ex.R-7 which is photocopy of extract of the relevant register, I am of the considered opinion that the respondent No.1 was not possessing a valid and effective driving license on the date of accident itself, because a perusal therefore reveals that this driving license was initially issued in his favour by the Licensing Authority, Palwal on 1.5.1981 authorizing him to drive motor-cycle, auto-rickshaw and car upto 20.6,.2004. Thereafter, it was got renewed on 29.4.2004 upto 20.6.2007 and then from 17.2.2011 upto 19.6.2012 and lastly, it was got renewed from 24.12.2014 to 16.6.2017 vide Ex.P-1. The accident in question had taken place on 9.12.2014. Hence, it is clear that the respondent No.1 was not holding a valid and effective driving license at the time of accident.

26. Moreso, as per testimony of RW-2 Ranbir Singh, Clerk,. RTA Office, Palwal, vide document Ex.R-8, the respondent No.1 had been authorized to drive the vehicle in question within the municipal area of Palwal and not 5 kilometers beyond the permissible area. It is relevant to mention here that as per pleadings and contends of FIR Ex.P-4, the accident in question had taken place in the area

of village Mohna, falling within the jurisdiction of police station Chhainsa. Hence, it can safely be inferred that the respondent No.1 being driver and owner of the vehicle in question, was plying the same beyond the permissible area i.e. in violation of the terms and conditions of the insurance policy. In view of the foregoing discussion, I have no hesitation to hold that the respondent No.1 being driver and owner of the vehicle in question is proved to have driven the same on the date of accident i.e. 9.12.2014 without possessing a valid and effective driving license and by driving the same beyond the permissible area thereby violating the terms and conditions of the insurance policy Ex.P-3 and therefore, he is certainly liable to pay the compensation amount and this liability cannot be imposed upon the insurer, because the insured is not proved to have taken due care in the compliance of conditions of insurance policy. With these observations, the respondent No.2 is exonerated from its liability to pay the compensation amount and is not held responsible for the same, whereas the respondent No.1 being driver as well as owner of the vehicle bearing registration No. HR-73-9865 only is held liable to pay the amount of compensation. Both

the issues are decided accordingly.”

Learned counsel for the appellant has contended that the findings by the Tribunal are wrong. As a matter of fact, the driving license to the appellant was initially issued by Licensing Authority, Palwal, to the driver/owner respondent No.1 on 1.5.1981, which was valid upto 20.6.2004. It was got renewed from 29.4.2004 to 20.6.2007 and then from 17.2.2011 upto 19.6.2012 and lastly from 24.12.2014 to 16.6.2017. The accident in question had taken place on 9.12.2014 and that the contention raised by the respondent Insurance Company that driving license Exhibit P-1 was not renewed at the time of the alleged accident, would not absolve it from paying the compensation amount to the claimants.

In support of his contention, learned counsel for the appellant has referred to certain judgments, the first being *Parveen Chawla vs. Shakuntla Rani and others 2016 (1) RCR (Civil) 187*, by a Single Bench of this Court, wherein it was observed that when the driving license was successively renewed for many years and Insurance Company failed to prove that there was willful default on the part of the owner of the vehicle, Insurance Company also failed to prove the issue, it was decided against the Insurance Company and in favour of the insured-owner of the vehicle and findings were modified accordingly.

The second authority referred to by him was *Oriental Insurance Co. Ltd. vs. Smt. K. Sundaramma alias Sundara and others 2004 (3) RCR (Civil) 840*, by Karnataka High Court, wherein

it was observed that when the accident had taken place when learner's license of rider had expired, Insurance Company cannot escape its liability because if rider of vehicle did not obtain renewal, it cannot be said that rider did not know how to drive the vehicle and that cannot tantamount to breach of condition of the policy.

The next judgment referred to by learned counsel for the appellant was *Future General Insurance Co. Ltd. vs. Smt. Surjo Devi and others 2013 (1) PLR 246* wherein it was observed that when violation of terms of permit in plying the vehicle on the place which had been not authorized to ply, a violation of any other term than the purpose for which the permit was to operate will not be a defence and the Insurance Company was held to be liable.

Last authority pressed into service by learned counsel for the appellant was *Krishnan vs. United India Insurance Company 1999 (2) ACJ 871*, by Kerala High Court, wherein it was observed that the insurer is liable to pay the compensation even if the accident occurred when the vehicle was plying on a route other than that mentioned in the permit.

Whereas, learned counsel appearing on behalf of the Insurance Company has countered these contentions stating that since appellant did not possess a legal and valid driving license and valid route permit at the time of the accident, which resulted in violation of terms and conditions of the Insurance Policy, therefore, the Insurance Company could not be held to be liable to indemnify the appellant with regard to its liability to pay the compensation to the claimants

under the award. In support of his contention he has referred to judgment *Ishwar Chandra and others vs. The Oriental Insurance Co. Ltd. And others 2007 (2) RCR (Civil) 370* by the Apex Court, wherein while dealing with an eventuality where the driver of the offending vehicle was possessing license, validity of which had expired 8 months prior to occurrence, the Insurance Company was not held to be liable.

Learned counsel for the Insurance company has further referred to a judgment *Oriental Insurance Company Limited vs. Poulose (Kerala) (Large Bench) 2015 (3) RCR (Civil) 23*, where it was observed that decision of the Full Bench in *Oriental Insurance Company Limited vs. Poulose 2004 (1) RCR (Civil) 601*, that the driving license continues to exist in spite of expiry of its validity period unless it has been shown that the licensee had been disqualified to hold one, does not lay down the correct law. It was further observed that under such circumstances, when motor accident is caused by a driver whose driving license had expired and not renewed, owner of the vehicle is liable to pay the compensation and not the insurer. However, the insurer can be directed to satisfy the award reserving the insurer's right to recover the same from the insured. Under the circumstances, the Tribunal was fully justified in passing the award making respondent No.1 – owner/driver of the offending vehicle liable to pay the compensation and while exonerating the Insurance Company of any liability.

Learned counsel for the Insurance Company had further

argued that the Tribunal has rightly exonerated the Insurance Company for another reason that the offending vehicle was being plied without a valid permit. In support of that contention, he had referred to judgment *Amrit Paul Singh and another vs. TATA AIG General Insurance Co. Ltd., and others*, passed in Civil Appeal No. 2253 of 2018 (arising out of SLP (Civil) No. 7692 of 2017), decided 17.5.2018, wherein it was observed that use of vehicle in public place without permit is fundamental statutory infraction and said situations cannot be equated with absence of license or fake license or license for different kind of vehicle, or, for that matter, violation of condition of carrying more number of passengers and under the circumstances, insurer is entitled to recover the compensation from the owner and the driver.

After hearing learned counsel for the parties and going through the authorities referred to by them, I find that the Tribunal had rightly come to the conclusion that there was violation of terms and conditions of the Insurance Policy and Insurance Company was not liable to indemnify the insured to discharge the liability of payment of compensation to the claimants under the award. But then appropriate and proper course was to direct the Insurance Company to discharge that liability granting it right to recover the said amount from respondent No.1 by moving the execution application before the Tribunal. The Tribunal did not opt to do so, rather it outrightly dismissed the claim petition against respondent No.2 Insurance company.

Therefore, the findings of the Tribunal in the award and award itself are modified to that extent, setting aside dismissal of the claim petition against respondent- Insurance company and in its place directing the respondent Insurance Company to discharge the liability to pay the compensation under the award to the claimants at the first instance and then recover the said amount from respondent No.1- appellant Inderpal by filing the execution application.

In that way the appeal is allowed partly.

7.8.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / Nos