110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2841 of 2020 (O&M)
Date of decision :November 16, 2020

UNITED INDIA INSURANCE CO. LIMITED .....Appellant

Versus

SUNITA DEVI AND OTHERS ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harinder Kumar, Advocate for the appellant.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

CM-9838-2020

Prayer in the application is for placing on record certified copy of testimony of Jagseer Singh i.e. owner of offending vehicle as Annexure A1. The same is taken on record, subject to just exceptions.

Application is disposed of.

FAO-2841-2020

This appeal has been filed by the insurance companychallenging award dated 05.03.2020 passed by the learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as the 'Tribunal') to the extent that liability of the appellant - insurance company has been wrongly fixed. The quantum is not under challenge in this appeal.

The claimants – respondents had preferred a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Amarjit Singh son of Shankar Lal in a motor vehicle accident which took place on 10.05.2019 near Shere Punjab Dhaba within the jurisdiction of KotFatta District

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Bathinda. The claimants are the widow and three children of the deceased - Amarjit Singh. The claim petition was resisted by the respondents.

Following issues were framed on the basis of pleadings:-

1 Whether AmarjitSinghson of Shankar Lal died due to accident caused by respondentAmritpal Singh on 10.5.2019, while drivingBus bearingRC No. PB-03AJ-6316 rashlyand negligently?OPP

2. Whether the claimantsare entitled to claim compensation. If so, to what extent and from whom? OPP

3. WhetherrespondentNo.1, allegeddriver of offending vehicle was not holdingvalid and effectivedrivinglicense to drive vehicle at the time of accidentin question?OPR-3

4. Whether respondentNo. 2, alleged owner of offending vehicle was not holdinga valid registrationcertificate, fitness certificate and insurance of the vehicle at the time of allegedaccident? OPR-3

5. Whether respondentNo. 1 has violated the termsand conditionsofthe insurancepolicy? OPR-3

6. Whether the claim petitionis not maintainable? OPR

7. Relief.

Learned Tribunal while taking into consideration the entire facts and circumstances of the case, including registration of FIR No. 30 dated 10.05.2019 and the evidence led by the parties, concluded that Amarjit Singh died in the motor vehicle accident which took place on 10.05.2019 due to rash and negligent driving of the offending Mini bus bearing registration No. PB-03AJ-6316 by Amritpal Singh – respondent No. 1.

Learned Tribunal while holding the deceased to be 49 years old, assessed his income to be Rs. 8000/- per month and awarded a sum of Rs.12,19,600/-which is detailed as hereunder:-

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1) On account of loss of dependency : Rs.10,29,600/-
2) On account of funeral expenses : Rs. 15,000/-
3) On account of loss of estate :Rs. 15,000/-
4) On account of loss of consortium : Rs.1,60,000/-

Learned Tribunal held the insurance company to be liable to indemnify the owner.Aggrievedtherefrom, this appeal has been filed.

Learned counsel for the appellant vehemently argues that specific evidence has been led by the insurance company to prove that the driving licence held by the respondent – driver Amritpal was not valid. Reliance was placed on the statement of Gaurav Goel, Data Entry Operator, RTO Bathinda, RW2. RW2 proved a copy of computerised screening report (Ex. R6) and stated that the driving licence in question had not been issued by their office. Verification report in this regard was placed on record as Ex. R7. Learned counsel for the appellant, thus, argues that once this evidence has been led, merely because the owner of the vehicle stated that he engaged the driver aftersatisfying himself with the skills of the driver after making inquiries about the licence, is not sufficient to saddle the appellant with liability. It is contended that there should be positive evidence on record to show that the respondent – owner had taken all specific and categoric steps in order to verify the driving licence of the driver. It is, thus, prayed that this appeal be allowed and the insurance company be absolved of its liability in toto.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Learned counsel for the appellant is unable to deny that the owner of the offending vehicle stepped into the witness box and deposed as RW1. RW1 has specifically stated that he hired the services of the respondent – driver after taking his driving test and after satisfying himself with the driving skills of the said

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respondent and making inquiries about the driving licence held by him. The question sought to be raised by learned counsel for the appellant is no longer res integra.Reference in this respect can gainfully be made to the judgments of the Hon'ble Supreme Court in**Pepsu RTC vs. National Insurance Co. 2013 (10) SCC 217**, **National Insurance Company Limited versus Swaran Singh and others 2004 (3) SCC 297**and **Nirmala Kothari vs. United India Insurance Co. Ltd. 2020 (2) RCR (Civil) 150**.It is a settled position that once due care and caution has been exercised by the owner of the vehicle while engaging services of the driver, the insurance company cannot be absolved of its liability to indemnify the owneron the ground that the driver is not holding a valid driving licence unless it is to be proved that the owner was aware that the licence was fake and he still permitted the driver to continue to drive the vehicle. It has been observed by the Hon'ble Supreme Court in **Swaran Singh's** case (supra) that:-

> "110. (iii)…Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time."

In **Nirmala's** case (supra), the Hon'ble Supreme Court observed as under:-

> " While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving

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> licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."

It is also relevant to note that in the present case, RW2 stated in his cross examination that possibility of record going missing from the computer due to a virus cannot be ruled out and that earlier the record pertaining to the same was manual and the record has not so far been updated in the computers. There is no dispute that the offending vehicle was otherwise, validly insured with the appellant. Learned counsel is unable to point out any fundamental breach of policy so as to absolve the appellant of its liability.

Keeping inview the facts and circumstances as above, I do not find any ground to interfere in this appeal for setting aside award dated05.03.2020 passed by the learned Motor Accident Claims Tribunal, Bathindaat the instance of the appellant – insurance company.

Appeal is, accordingly, dismissed.

(Lisa Gill)
Judge

November 16, 2020
Rts

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

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