IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1591 of 2008 (O&M)
DATE OF DECISION : 29.06.2020

Surmukh Singh and another …Appellants

Versus

New India Assurance Company and others …Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Arvind Kashyap, Advocate,
for the appellants.

Mr. Ajay Singla, Advocate,
for respondent No.1-Insurance Company.

None for respondent Nos.2 and 3.

KARAMJIT SINGH, J.

The appellants, being owner and driver of the offending vehicle, have filed this appeal against the award dated 22.01.2008 passed by the Motor Accident Claims Tribunal, Ropar (hereinafter referred to as 'the Tribunal'), whereby, recovery rights were given to respondent No.1-Insurance Company to recover the awarded amount from them with a direction to the Insurance Company to satisfy the award at the first instance.

Briefly stated the facts of the present case are that on 30.03.1998, deceased-Kala Ram along with Satpal and others was coming from the side of Nangal toward Anandpur Sahib, on their left side. At about 4:00 A.M., when they reached in the area of village Dher on Nangal-Ropar road, in the meantime, a Tempo bearing registration No.PB-23-9286, which was driven by appellant No.2-Harpreet Singh in a rash and negligent manner, came from behind and it firstly hit against a Kikkar tree and then turned turtle upon the deceased, as a result of which, the deceased and other persons received multiple injuries. They were taken to B.B.M.B Hospital, Nangal, from where, the deceased was referred to P.G.I, Chandigarh, where he succumbed to his injuries on 05.05.1998. Claimants, being the mother and brother of the deceased, spent more then Rs.1,00,000/- on his treatment. The deceased was aged about 20 years and was labourer by profession and he used to earn Rs.5,000/- per month. The offending vehicle was owned by appellant No.1-Surmukh Singh and was insured with respondent No.1-New India Assurance Company Limited. The claimants/respondent Nos.2 and 3 sought compensation worth Rs.10 lac under Section 166 of the Motor Vehicles Act, on account of death of Kala Ram, in the aforesaid accident.

The claim petition was contested by the appellants as well as by the Insurance Company. In their joint written statement, respondent Nos.1 and 2 (appellants herein) denied the factum of the accident and they prayed for dismissal of the claim petition.

The Insurance Company in its separate written statement pleaded that no such accident as alleged by the claimants/respondent Nos.2 and 3 ever took place. It also took plea that at the time of alleged accident, the driver of the offending vehicle was not holding a valid and effective driving licence.

On the pleadings of the the parties, following issues were framed by the Tribunal:-

1. Whether Kala Ram died in motor vehicle accident which was caused by respondent Harpreet Singh while driving Tempo No.PB-23-9286 in rash and negligent manner on 30.03.1998 in the area of village Dher? OPP.

2. Whether at the time of accident respondent Harpreet Singh

was not holding valid and effective driving licence? If so, its effect? OPR.

3. Whether the claim petition has been filed by the claimant in collusion of respondents No.1 and 2? If so its effect? OPR-3

4. Whether the claimants are entitled to get any compensation? If so, to what extent and from whom? OPP

5. Relief.

Claimant No.1-Mahindro Devi appeared as PW1. She also examined PW2-Satpal, who witnessed the accident in question. A copy of post-mortem report of the deceased (Exhibit P1), copy of FIR (Exhibit P2), copy of charge-sheet (Exhibit P3) were also tendered in the evidence on behalf of the claimants/respondent Nos.2 and 3.

On the other hand appellant No.1-Surmukh Singh appeared in the witness-box as RW1 and he proved driving licence of appellant No.2-Harpreet Singh (Exhibit R4), verification report of the said driving licence (Exhibit R5), Registration Certificate of the offending vehicle (Exhibit R6), insurance policy (Exhibit R7) and copy of award (Exhibit R8). Learned counsel for the Insurance Company tendered into evidence copy of award (Exhibit R1) dated 09.02.2000, copy of driving licence (Exhibit R2) and copy of insurance policy (Exhibit R3).

After hearing learned counsel for the parties, the Tribunal allowed the claim petition and granted compensation worth Rs.3,12,000/- in favour of the claimants/respondent Nos.2 and 3 and against the owner, driver and insurer of the offending vehicle along with interest at the rate of 6% per annum from the date of filing of the claim petition, if the amount of compensation is deposited by the respondents within a period of two months from the date of order, failing which the claimants/respondent Nos.2 and 3 were held entitled to interest at the rate of 9% per annum from the date of filing of the claim petition till the realization of the awarded amount with further direction to the Insurance Company to pay the amount of compensation to the claimants/respondent Nos.2 and 3 with liberty to recover the said amount from owner and driver (appellants herein), while observing that the driver of the offending vehicle was not holding a legal and valid driving licence at the time of accident.

Aggrieved by the said award, the present appeal has been filed by the appellants, being the owner and driver of the offending vehicle. No appeal was filed by the claimants/respondent Nos.2 and 3 or by the insurer against the aforesaid award.

Learned counsel for the appellants, while assailing the award, has contended that appellant No.2-Harpreet Singh, driver of the offending vehicle, was holding valid and effective driving licence and the same was Exhibit R4. The same was issued by the Licensing Authority, Amritsar, as is clear from the verification report, which is part of the record. The Tribunal wrongly invalidated the said driving licence on the ground that it was issued to underage person. It is further contended that, even if, there was some irregularity in the said driving licence, the same was rectified by its renewal, by the concerned licensing authority. The said renewal was also found to be genuine and the concerned verification report is available on the record. Learned counsel for the appellants further contended that even the licence issued to underage person cannot be considered to be invalid unless it is declared so by the competent licensing authority. In support of his contentions, learned counsel for the appellants referred to **Commissioner of Police Vs. Naseeb Singh, 2002 (1) R.C.R.(Civil) 637**, wherein, Division Bench of Hon'ble Delhi High Court held that the licence issued to underage person for whatever reason, whether by mistake, inadvertence or misrepresentation, fraud, etc. cannot be considered void on being noticed, unless it is declared so by the competent licensing authority, in accordance with the procedure established by law for purpose.

Learned counsel for the appellants further contended that the claim petition filed by another victim with regard to the accident in question was allowed by the Tribunal while holding that the driver of the offending vehicle was possessing valid and effective driving licence at the time of the accident. Thus, it stands proved that appellant No.2-Harpreet Singh was having a valid driving licence at the relevant time. It is further argued that the Insurance Company has failed to prove that the offending vehicle was driven by its driver in violation of the terms and conditions of the insurance policy. In these circumstances, it being third party claim, only insurer is liable to pay compensation.

On the other hand, learned counsel for the respondent-Insurance Company submitted that appellant No.2-Harpreet Singh was less than 18 years of age, when he got issued driving licence in his name, to drive scooter and Light Transport Vehicle (LTV). Thus, the said driving licence was invalid from the very beginning and its renewal was not sufficient to make it valid. So, the Tribunal rightly granted recovery rights to the insurer, as at the time of accident, the driver of the offending vehicle was not holding a valid driving licence. It was prayed that the appeal deserve to be dismissed having no merits.

I have considered the submissions made by the learned counsel for the parties.

The copy of the driving licence of the driver of the offending vehicle is available on the record. As per the said driving licence, appellant No.2-Harpreet Singh was born on 15.06.1975. The said driving licence was issued on 17.05.1993 and was valid upto 15.05.1999 to drive scooter and LTV. The said driving licence was issued in the name of appellant No.2-Harpreet Singh when he was less than 18 years of age. So, it is clear that the said driving licence was issued to underage person to drive LTV, in contravention of the provisions of Section 4 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), which provides that no person under the age of 18 years shall drive a motor vehicle and no person under the age of 20 years shall drive a transport vehicle in any public place. In the present case, the vehicle involved in an accident was Tempo bearing registration No.PB-23-9286. The same does not come under the proviso to Section 4(1) of the Act, as per which, a motor-cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of 16 years. Section 8 of the Act provides for grant of learner's licence. However, the present case is not relating to learner's licence.

The plea of the appellants is that the renewal of the driving licence of appellant No.2-Harpreet Singh, made it valid. This Court is of the view that the argument raised by the learned counsel for the appellants does not hold good. The accident in question took place on 30.03.1998 and as per record, the driving licence of appellant No.2-Harpreet Singh was renewed for the first time after its expiry on 15.05.1999. So, the driving licence in question was renewed for the first time only after the accident had taken place. Also, there is nothing on the record to prove that the first renewal of the driving licence was made within one month of its expiry, i.e., 15.05.1999. So, as per proviso to Section 15 of the Act, the driving licence in question was deemed to be renewed with effect from the date of renewal, which appears to be 19.08.1999 or 19.08.2000. There is no doubt that at the time of accident, appellant No.2-Harpreet Singh was more than 20 years. However, this fact will not be of any help to the appellants. So, it stands proved that the driving licence in question was issued in the name of appellant No.2-Harpreet Singh when he was less than 18 years of age and, as such, it was invalid at the time of its issuance and till the date of accident, it was not renewed/revalidated by any competent authority. So, it stands proved that at the time of accident, the driver of the offending vehicle was not possessing a valid driving licence. The first renewal dated 19.08.1999 (19.08.2000) is of no consequence. If in the connected claim petition arising out of the same accident, which was decided separately, the Tribunal lost sight of the above stated illegality with regard to the driving licence, the appellants cannot take benefit of the same.

It is not disputed that appellant No.2-Harpreet Singh is son of appellant No.1-Surmukh Singh. Even, in the aforesaid driving licence, Harpreet Singh was recorded to be son of Surmukh Singh. As the appellants are father and son, it cannot said that appellant No.1-Surmukh Singh was not in knowledge about the fact that his son obtained aforesaid driving licence when he was underage. So, appellant No.1, being the owner of the offending vehicle, cannot take the plea that he was not in knowledge about the above discussed invalidity of the driving licence of his son, at the time of accident. So, in this case, insurer discharged his burden by establishing that appellants intentionally committed breach of insurance policy. In **National Insurance Company Ltd. Vs. Swaran Singh and another, 2004(3) SCC 297**, the Hon'ble Apex Court had specifically held that under the Act, holding of a valid driving licence is one of the conditions of contract of insurance and driving of the vehicle without a valid licence is an offence.

The case law referred by the learned counsel for the appellants is entirely on different footing. The said case was relating to cancellation of the candidature of the respondents for the post of Constable (Driver) on the ground that they were underage when they procured driving licence. The said case was not relating to grant of compensation under Section 166/163-A of the Act.

In the light of the above discussion, this Court is of the view that the findings returned by the Tribunal regarding invalidity of the driving licence of appellant No.2-Harpreet Singh do not suffer from any illegality or perversity.

Consequently, this appeal fails and is hereby dismissed. However, parties are left to bear their own costs.

(KARAMJIT SINGH)
JUDGE

29.06.2020
adhikari

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No