IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3749 of 2009 (O&M)
Date of decision: 09.01.2020

National Insurance Co. Ltd. ... Appellant

Versus

Sushila Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the appellant.

Mr. Anurag Jain, Advocate
for respondents No.1 to 4.

Mr. Deepak K. Sharma, Advocate
for respondent No.5.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 05.03.2009 passed by the Motor Accidents Claims Tribunal, Hisar to the limited extent that the insurance company is entitle to have right of recovery against the insured on the question of driving licence.

Counsel for the appellant would argue that in respect of occurrence dated 03.05.2004, the claim application was filed on 31.03.2005 and name of driver of offending vehicle was not given in the claim application and it was mentioned that particulars of the driver would be supplied by respondent No.1 therein namely Jitender, owner of offending tempo No.HR-39-3423. It is further submitted by referring to para 3 of the award that Jitender was initially proceeded against ex parte vide order dated 29.08.2005 passed by the Tribunal. Later, he filed an application for setting aside ex parte order dated 29.08.2005 which was allowed on 10.04.2006 and case was fixed for filing of particulars of respondent No.2 but Jitender did not furnish the particulars till 07.05.2007 but again opted to be proceeded ex parte. It is vehemently argued that the very fact that Jitender did not supply particulars of driver of offending vehicle for a period of more than one year since ex parte proceedings were set aside and until he was proceeded ex parte for the second time, in case application filed by Jitender under Section 151 CPC for placing on record copy of driving licence of Telu Ram is allowed, it would amount to leading evidence even without impleading driver of the vehicle with his complete particulars. It is further argued that as per investigation conducted by the insurer, Jitender himself was driver of offending vehicle and for that reason, he did not supply particulars of the driver. Counsel would inform that the appeal was filed in the year 2009 and service of respondents therein was also completed in the year 2009 but application under Section 151 CPC has been filed by Jitender in October, 2018 with a clever attempt to counter claim of the insurance company for giving right of recovery against the insured.

Counsel representing respondent No.5, on the contrary, would argue that respondent has filed the aforesaid application to place on record driving licence Annexure R5/1 possessed by Telu Ram, driver of offending vehicle on the date of alleged occurrence. It is further argued that respondent No.5 has also filed an application under Order 41 Rule 27 read with Section 151 CPC seeking permission to adduce additional evidence by producing driving licence of Telu Ram Annexure R5/1. It is argued that as Telu Ram, driver of offending vehicle was holding a valid licence, contention raised by insurance company that insured is guilty of violating the terms and conditions of policy for want of valid driving licence with driver sans merit and liable to be rejected.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that in the claim application filed in the year 2005, particulars of the driver against respondent No.2 were not given with a mention that the same would be disclosed by respondent No.1 therein namely Jitender, owner of offending vehicle. Jitender was proceeded ex parte vide order dated 29.08.2005 but later that order was set aside. Again, he absented from the proceedings and was proceeded ex parte on 07.05.2007. A relevant extract from para 3 of the award, reads as follows:-

> xx xx Thereafter the case was fixed for filing of particulars of respondent No.2 but the particulars were not furnished by respondent No.1 Jitender owner of the offending vehicle till 07.05.2007 and ultimately respondent No.1 was proceeded against ex parte again on 07.05.2007.

Jitender did not come forward to disclose particulars of the driver despite he being allowed to join the proceedings on 10.04.2006 and case remained pending for furnishing particulars of the driver till 07.05.2007. He has filed application CM No.22656-CII of 2018 under Section 151 CPC for placing on record copy of driving licence Annexure R5/1 and second application for seeking permission to adduce additional evidence in respect of driving licence of Telu Ram Annexure R5/1. Since the respondent never supplied particulars of driver of offending vehicle at an appropriate stage and even till passing of the award in March, 2009 and until filing of this application in the year 2018 in an appeal pending since 2009, allegations raised in the application are the result of well thought of story, may be concocted with use of fertile legal brain, therefore, he cannot be permitted to place on record driving licence of one Telu Ram in order to contend that vehicle was driven by duly licensed driver. The applications filed by respondent No.5 are nothing but an abuse and misuse of process of law in order to negative claim of the insurance company seeking recovery from the insured on account of his having violated the terms and conditions of policy. That being so, respondent No.5 cannot derive any advantage to his contention from the aforesaid applications or driving licence possessed by Telu Ram. As the insured failed to provide particulars of driver of the offending vehicle much less to produce a copy of his driving licence for the purpose of verification by the insurance company at an appropriate stage, the insured has failed to discharge his primary obligation to prove that vehicle was given for driving to a particular person who was duly licensed on the date of occurrence. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.** In this view of the matter, there is no escape from conclusion that insured is guilty of violating the terms and conditions of insurance policy. That being so, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

09.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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