IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 335 of 2021(O&M)

Date of Decision: November *12* , 2021.

New India Assurance Company Ltd. ...... APPELLANT (s)

Versus

Sarbani Gorai and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.C.Kapoor, Advocate
for the appellant.

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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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<u>LISA GILL, J.</u>

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

Appellant-Insurance company being aggrieved of award dated 10.08.2020 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, the 'Tribunal') has filed this appeal

Brief facts necessary for adjudication of this case are that, a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') filed by the claimants-respondents was decided by the learned Tribunal vide award dated 25.08.2015 and compensation to the tune of ₹51,25,000/- was awarded alongwith interest at the rate of 7.5% per annum on account of death of one Parshant Gorai. It was held that the accident took place due to rash and negligent driving of the offending truck bearing registration No.PB-65-N-7602, which was insured with the appellant-Insurance company. FAO No.132 of 2016 was filed by the Insurance company challenging the said award, which was disposed of on 31.01.2019. While upholding the quantum of compensation, the matter was remanded to the learned Tribunal to return its finding on Issue No.3 i.e., "**Whether the driver of offending vehicle was not holding a valid and effective driving license on the date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy? OPR3**"

Following observations were made by this High Court while remanding the matter on 31.01.2019:-

> "The second grievance raised in the appeal of the insurer is that the driving licence of the driver of the offending vehicle was not valid at the time of accident. There are two driving licence reports being produced for the first time in the appeal one by the insurance company obtained under Right to Information Act, (for short 'RTI') stating that the licence was not valid at the time of accident. The said report has been produced along with the application. With the reply filed to the application, the driver and owner of the offending vehicle has annexed another report received under RTI. As per the said report, the driving licence was valid at the time of accident.
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> As both the reports are being produced for the first time and the argument of both the counsel is that the said document was not available at the time of passing of award, the issue only with regard to liability to pay compensation is remitted back to the Tribunal to be decided in accordance with law after affording opportunity to the insurer as well as the owner and driver to adduce evidence in support of their claims, if so desired by them. Both the reports produced before this Court be sent to the Tribunal.
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> The insurer, owner and driver are directed to appear before

the Tribunal on 18.3.2019."

Consequently, the matter came up before the learned Tribunal. Evidence was led by the Insurance company as well as respondents No.6 and 7 i.e., driver and owner of the offending vehicle, respectively.

Learned Tribunal on considering the facts and circumstances as well as evidence on record concluded that driver of the offending truck was holding a valid and effective driving license on the date of accident and that he was not holding two driving licenses as was averred. Therefore, Issue No.3 was decided against the Insurance company and it was not found entitled to any recovery rights qua owner and driver of the offending vehicle. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned Tribunal has grossly erred on facts and in law in denying recovery rights to the appellant-Insurance company. It has wrongly been held that the driver of the offending vehicle was holding a valid and effective driving license on the date of accident. It is submitted that there is clear cut violation of the terms and conditions of the Insurance policy. The driver, it is submitted, is a resident of West Bengal, but he has illegally got the driving license from the State of Nagaland, therefore, it cannot be said that the said driving license is a valid one. Moreover, learned counsel refers to the report Ex.RW1/1 to submit that the driving license not being on the Smart Card is an invalid driving license and cannot be treated to be a genuine one. It is thus prayed that this appeal be allowed and impugned award dated 10.08.2020 passed by the learned Tribunal be set aside and recovery rights be afforded to the appellant-Insurance company.

Heard learned counsel for the appellant at length and have gone through the record with his able assistance.

The occurrence of motor vehicle accident on 22.07.2014 due to rash and negligent driving of the offending truck bearing registration No.PB-65-N-7602 is not in dispute, neither is there any dispute regarding the quantum of compensation which stands decided in the earlier round of litigation. Entire foundation of appellant's argument regarding the driver of the offending vehicle not possessing an effective and valid driving license is sought to be built around notification (Ex.R2) and report dated 29.10.2015 (Ex.RW1/1) from the office of Regional Transport Office (RTO), Mokokchung, Nagaland obtained under the Right to Information Act, 2005. Further argument raised is that there is violation of provisions of Section 9 of the Act as driver of the offending vehicle produced another driving license (Ex.RZ) with different number, issued from Nagaland, which reflects that the driver of the offending vehicle was in possession of two different driving licenses.

It is a matter of record that as per notification (Ex.R2) issued by the Transport Commissioner, Nagaland those driving licenses, which were issued in booklet form after 30.10.2009 are to be treated as invalid if not converted into Smart Card. The driving license in question (Ex.R8) was admittedly issued prior thereto i.e., on 28.09.2009. It is further a matter of record that as per notification (Ex.R2), the entire exercise of conversion of driving licenses issued in booklet or any manual formats into Smart Card was to be completed before 01.12.2014. It is thus correctly observed by the learned Tribunal that the licenses which were issued in booklet or any manual formats were to be converted into Smart Card from 01.08.2014 till 30.11.2014 and any such license issued prior to 30.10.2009 was to be treated as genuine till 30.11.2014.

In the present case, accident took place on 22.07.2014 and the driving license (Ex.R8) was issued on 28.09.2009, therefore, it has correctly been held to be a valid and genuine driving license. Merely because it was not converted into a Smart Card, cannot be a reason to treat it to be a fake driving license. Reliance on report (Ex.RW1/1) is also of no avail to the appellant-Insurance company for the reason that as per the said report, it is no where stated that the driving license (Ex.R8) was not issued by RTO, Mokokhung, Nagaland. What is stated in the report (Ex.RW1/1) is that since the driving license was not on Smart Card Sarathi, therefore, as per notification (Ex.R2) of Transport Commissioner, Nagaland, the same be treated as cancelled.

The matter does not end here. It is borne out from the record that report dated 31.08.2016 (Ex.RX), which is with regard to driving license No.NL-0220090018477 (Ex.RY) mentions date of issue thereof as 28.09.2009 i.e., date of issue of driving license (Ex.R8). Said driving license (Ex.RY) was issued on 17.03.2016 and renewed on 19.03.2019 (Ex.RZ). Ex.RY/RZ are reflected on the Smart Card Sarathi. It is specifically observed by the learned Tribunal as under:-

> "............... Original date of issuance of the above DL being mentioned as 28.09.2009 in Ex.RX and DL Ex.RY/RZ, it is made out that DL Ex.R8 was surrendered to be convered into Smart Card by respondent No.1 and accordingly, DL Ex.RY/RZ was issued by the licensing authority concerned. This also substantiates that DL Ex.R8 was issued byRTO, Mokokchung, Nagaland on 28.09.2009."

It is thus apparent that driver of the offending truck was initially issued driving license (Ex.R8), which was later converted into Smart Card Sarathi (Ex.RY), was assigned a different number and subsequently renewed in the year 2019 (Ex.RZ). Therefore, it cannot be said that driver of the offending vehicle was in possession of two different driving licenses at the same time. Thus there is no question of violation of the terms and conditions of the policy, of which the Insurance company can derive any benefit.

Last but not least, an argument was raised that there is a gross violation of provisions of the Act by the driver of the offending vehicle, inasmuch as he is a resident of West Bengal and he had wrongly obtained a driving license from the State of Nagaland. Learned counsel for the appellant cannot deny that residential address of the driver in the driving license (Ex.R8) is duly mentioned as that of West Bengal itself, which clearly indicates that there was no attempt on the part of the driver to conceal any material fact from the authorities. It is thus correctly observed by the learned Tribunal that the RTO, Mokokchung, Nagaland would have issued the driving license (Ex.R8) after being fully satisfied about fulfillment of the conditions of Section 9 of the Act. Moreover, there is no evidence on record to prove the driving license (Ex.R8) to be invalid or fake. The vehicle in question was validly insured with the appellant-Insurance company.

Keeping in view the facts and circumstances of the case, I do not find any ground, whatsoever, to interfere in the detailed and well reasoned award passed by the learned Motor Accident Claims Tribunal, Chandigarh after proper consideration of the evidence on record.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 10.08.2020 passed by the learned Motor Accident Claims Tribunal, Chandigarh, which calls for interference by this Court, at the instance of the appellant-Insurance company.

Consequently, this appeal is dismissed with no order as to cost.

(LISA GILL)
JUDGE

November *12* , 2021.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No