IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5218-2019(O&M)
Date of decision: 20.04.2021

Parveen and another

.......Appellants

Versus

United India Insurance Company Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aurav Bakshi, Advocate for the appellants

Mr. Lalit Garg, Advocate, for the respondents

ANIL KSHETARPAL, J.

This appeal has been filed by the Driver and the Owner of the offending vehicle assailing the correctness of the award passed by Motor Accident Claims Tribunal. In a motor vehicular accident, late Sh. Om Parkash, who was riding a bicycle, lost his life. The accident is alleged to have taken place with the vehicle owned by appellant no.2. At the relevant time, the offending vehicle was driven by appellant no.1. The parents, widow and three minor children filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. The Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide an award dated 08.07.2016 assessed the compensation payable at Rs.18,53,000/-. Against the award, two first appeals were preferred in this Court, which were decided on 29.01.2019, while remitting the cases back to the Tribunal in view of the consensus arrived at between the learned counsel for the parties. While remitting back, the Tribunal was directed to permit the parties to lead evidence. An application for additional evidence, which had been filed in this court was also sent back with a request to the Tribunal to decide the same in accordance with law. Pursuant to the aforesaid order of remand passed on 29.01.2019, the learned Tribunal has passed the impugned award. It is significant to note here that on verification, the driving license tendered in evidence by the owner was found to be fake. Parveen-appellant No.1 claims that he has been issued the driving license by the District Transport Officer, Tuensang, Nagaland. On verification, it was found that the aforesaid license was issued to Bhairabanan Borah and not to Parveen. Thus, the Tribunal held that the Insurance Company, after paying the amount to the claimants, can recover the same from the owner and the driver of the offending vehicle (the appellants herein).

That is how the appeals have been filed. Heard learned counsel for the parties at length and with their able assistance perused the paper book alongwith the requisitioned record. It may be noted here that neither the owner nor the driver has deposed in the case. After the case was remitted back to the Tribunal vide an order dated 29.01.2019, the appellants produced evidence to prove that the vehicle was insured with the Insurance Company i.e respondent no.1, however, no evidence was produced to prove that the driving license issued in favour of the appellant no.1 was genuine. Appellant no.2 has not even appeared in evidence to depose that while engaging appellant no.1, he had satisfied himself with the driving skills of appellant no.1.

Learned counsel representing the appellants contends that the onus to prove violation of the terms and conditions of the insurance policy is on the Insurance Company and therefore, the Tribunal has erred in granting liberty to the insurer to recover the amount from the appellants. In support thereof, he relies upon the judgment passed in **Neelam Kothari Vs. United India Insurance (2020) 4 SCC 489**.

Per contra, learned counsel representing the Insurance Company has submitted that if it is proved that the driving license is fake, the initial onus is on the owner to prove that he had taken all precautions. He further contends the owner is required to plead and prove that he had satisfied himself about the driving skills of the driver sought to be engaged. Learned counsel relies upon the judgment passed in **National Insurance Company vs. Swaran Singh and others (2004) 3 SCC 297 and Pappu and others vs. Vinod Kumar Lamba and others (2018) 3 SCC 208**.

At the outset, it must be noticed that the judgment passed in Neelam Kothari (supra), is in the facts of the case as specifically indicated by the Hon'ble Supreme Court. Still further, in that case, the owner of the vehicle and his daughter had died in the accident. Whereas, in the present case, the facts are entirely different. The claimants are third party. In Swaran Singh's case (supra), the Hon'ble Supreme Court held that if the owner enters in the witness box and asserts that apart from looking at the driving license, he had himself examined the driving skills of the driver and found it satisfactory then the onus shifts on the Insurance Company to prove that there is a violation of the terms of the Insurance Company by the insured. Further, in Pappu's case (supra), a three Judges Bench went on to hold that the owner is not only required to plead but also prove that he had not intentionally violated the terms of the policy. In other words, the owner of the offending vehicle is required to plead and prove that he had seen the driving licence and it appeared to be genuine. He was specifically required to make a statement in the evidence to this effect.

In the present case, as noticed above, the appellants have failed to enter into the witness box. Appellant no.2 has not produced any evidence to prove that he, while engaging appellant no.1, satisfied himself with regard to the driving skills of the appellant no.1. In absence thereof, the learned Tribunal has rightly held that the Insurance Company is entitled to recover the amount.

Keeping in view the aforesaid facts, there is no ground to interfere with the judgment of the Tribunal.

Hence, dismissed.

20.04.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned Yes /No
Whether Reportable Yes / No