IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO-5414-2019 (O&M
Date of decision: 14.11.2022

Mahal Singh .....Appellant

Versus

Satish and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amit Jain, Advocate
for the appellant.

Mr. Pawan Singh, Advocate
for respondent No.1.

Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate
for respondent No.3-insurance company.

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MANJARI NEHRU KAUL, J. (ORAL)

The owner of the offending vehicle i.e. truck bearing registration No.HR-55A-2577 is in appeal before this Court to challenge recovery rights given to respondent No.3-insurance company with respect to the compensation awarded to the claimants vide award dated 06.05.2019 by learned Motor Accidents Claims Tribunal, Gurugram (for short, 'the Tribunal') on account of the injuries sustained by claimant Satish in a Motor Vehicular Accident which took place on 08.04.2010.

Learned counsel appearing for the appellant-owner argued that the Tribunal had in fact committed patent illegality in granting recovery rights to respondent No.3-insurance company by failing to appreciate that the alleged driving licence verification report (Ex.R2) had not even been proved in accordance with law as none of the officials of the Licensing Authority had been examined. It was still further argued that the Tribunal had gravely erred in observing that the appellant-owner while stepping into the witness box chose to remain completely silent and did not utter a single word with respect to the report (Ex.R2). While inviting the attention of this Court to the evidence, particularly the cross-examination of the appellant-owner, learned counsel submitted that a perusal of the same clearly showed that no suggestion much less by way of a whisper had been put to the appellant with regard to the driving licence of the driver of the offending vehicle being fake. Learned counsel thus argued that the Tribunal fell into error in absolving respondent No.3-insurance company of its liability specially when the Tribunal had itself observed that no cogent evidence had been led by the insurance company to even remotely suggest that the appellant had knowledge of the fact that the driver was carrying a fake driving licence. He urged that the Tribunal while granting recovery rights to respondent No.3-insurance company had ignored the settled law that unless and until it stood proved that the owner of the offending vehicle had been aware that the driving licence of the driver was fake and despite that he permitted him to drive the offending vehicle, the insurance company could not be absolved of its liability to indemnify the insured.

Per contra, learned counsel for respondent No.3-insurance company vehemently opposed the submissions made by the counsel opposite and argued that the Tribunal had rightly fastened the liability on the appellant-owner and granted recovery rights to the insurance company as it stood proved vide verification report (Ex.R2) that the driving licence of the driver of the offending vehicle was fake. He further submitted that since Ex.R2 had been obtained through RTI, it required no corroboration in the manner as contemplated under Section 77 of the Evidence Act.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court concurs with the submissions made by learned counsel for the appellant-owner that the verification report (Ex.R2) pertaining to the driving licence of the driver of the offending vehicle was not proved in accordance with the provisions of law. A Division Bench of this Court in ***National Insurance Co. Ltd. Vs. Santosh and others : 1999(3) TAC 799*** has held as under:-

> *"In other words, it becomes necessary that documents have to be proved in accordance with law. Mere production of a report/certificate from Motor Licensing Authority does not prove the document Exh. R-4. No witness as already pointed out above from the Licensing Authority had been examined. Only he could produce the record and on basis of that can make the statement in court. There could be no cross-examination in the absence of such a witness having been examined in court. In that view of the matter, therefore, Exh. R-4 could not be read in evidence. It was, therefore, not established that Exh. R-1 was not a valid driving licence. The first submission, therefore, must fail."*

Once verification report (Ex.R2) has admittedly not been proved in accordance with the provisions of law, this Court has no hesitation in holding that respondent No.3-insurance company could not have been absolved of its liability to indemnify the insured. Still further, admittedly a perusal of the cross-examination done on the appellant reveals that no suggestion with respect to the driving licence of the driver being fake was put to him. Not only this, even respondent

No.3-insurance company failed to lead any evidence to the effect that even though the appellant was well aware that the driving licence of the driver was fake and yet he permitted him to drive offending vehicle.

As an upshot to the above, the instant appeal is allowed and respondent No.3-insurance company is held liable to pay the entire amount of compensation to the claimant injured.

14.11.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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