261 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **FAO-4336-2015**
Date of Decision : July 11, 2022

Naresh Kumar …..Appellant
Vs.
Dharampal and others ....Respondents

2. **FAO-4337-2015 (O&M)**

Naresh Kumar …..Appellant
Vs.
Dharampal and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Dhiman, Advocate
for the appellant(s)

Mr. V. Ramswaroop, Advocate
for the Insurance Company.

ARVIND SINGH SANGWAN, J.

By way of this common judgment, this Court intends to dispose of both the above-mentioned appeals, which have been arisen out of the award of even dated 26.3.2015 passed by the Motor Accident Claims Tribunal, Gurgaon.

Prayer in these appeals is to set aside the impugned award vide which the Tribunal, while deciding the claim petitions under Issue Nos.3 and 4 held that Richpal-respondent No.1 before the learned Tribunal at Gurgaon was not holding a valid driving license to drive the

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offending vehicle No. HR-55-N-1950 and has, thus, held the appellant liable to indemnify the insurer. The operative part of the judgment reads as under :-

> "21. I have heard the rival contentions of learned counsel for the parties and have perused the case file very carefully.
>
> 22. In the present cast Ex.P5 is the driving licence of respondent No.1-Richpal. From the perusal of the same it reveals that respondent No.1 was having driving licence to drive motorcycle with gear and light motor vehicle. He was not authorized to drive heavy vehicle Ex.P3 is the certified copy of national permit of the vehicle and Ex.P4 is the certified copy of RC of the offending vehicle. From the perusal of the same it reveals that the offending vehicle was a heavy goods vehicle. The respondent No.1 was not authorized to drive heavy goods vehicle. Although the respondent No.1 was having a valid driving licence but, he was not authorized to drive the offending vehicle. Meaning thereby while driving the offending vehicle, the respondent No.1 has violated the terms and conditions of the insurance policy. Therefore, the respondent No.3 is not liable to indemnify the insured because the owner and the driver of the offending vehicle have violated the terms and conditions of the insurance policy. However, in view of the law laid down by the Hon'ble Apex Court in National Insurance Company Vs. Swaran Singh and others, 2004(1) PLR 510, insurance company shall pay the compensation

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> amount with its right to recover the same from respondents No.1 and 2.
>
> With these observations, all the aforesaid issues are decided in favour of respondent No.3, accordingly."

It is argued on behalf of the appellant that the respondent-Insurance Company has already paid the amount to the claimant and in pursuance to the recovery rights given to the respondent-Insurance Company on the ground that the appellant, being the owner and respondent No.1-Rachpal, who was driver of the offending vehicle, was not having a valid licence to drive the heavy vehicle, has not properly appreciated the driving licence Ex.P5, on which an endorsement is made for heavy goods vehicle.

Counsel for the appellant has submitted that the appellant, at the first instance, has moved an application for reviewing the award before the Tribunal that on the driving licence Ex.P5 there is a due endorsement by the RTA that he is holding a valid driving licence to drive a heavy goods vehicle w.e.f. 18.6.2009 to 5.5.2012 and, later on, renewed from 21.6.2012 to 20.6.2015, therefore, on the date of accident, i.e. 26.2.2014, the driver was holding a valid licence to drive the heavy goods vehicle.

Counsel for the appellant has further submitted that even in the written statement filed before the Tribunal, it was stated that the respondent No.1 was holding a valid and effective driving licence to drive the alleged offending vehicle on the date of accident and the vehicle was insured with respondent No.3-Insurance Company. Counsel for the appellant has further submitted that though a plea is taken by respondent No.3 in the written statement that the driver of the offending vehicle was not holding a valid and effective driving

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2022.07.13 12:05
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license to drive the heavy vehicle, therefore, the Insurance Company is not liable in this regard.

Counsel for the appellant has referred to the statement of PW1 Madan Lal, Additional Ahlmad in the Court of SDJM, where the FIR was registered against the driver of the offending vehicle and the driving license Ex.P5 was taken in possession by the police, proved the copy of the driving license Ex.P5 on which there is an endorsement dated 21.6.2012 that the driving license was renewed from 21.6.2012 to 20.6.2015 for a heavy goods vehicle.

Counsel for the appellant has further submitted that no suggestion was given to PW2 Dharam Pal that the appellant was not holding a valid driving license. He further submits that no evidence to the contrary was led by respondent No.3-Insurance Company to prove that the license was either not a valid driving license or was not valid for driving the heavy goods vehicle and in the absence of any evidence, the Tribunal has wrongly drawn presumption that the driver of the offending vehicle was not holding a valid driving license to drive the heavy goods vehicle.

Counsel for the appellant has submitted that the driving license No.3299/MVDIR dated 18.1.2003 was renewed vide renewal No.9760/MVD/R-12 by the Licensing Authority, Motor Vehicle Department, Rajouri from where the license was initially issued on 18.1.2003 and later on, vide the first endorsement dated 5.5.2012 as well as second endorsement dated 21.6.2012 was endorsed for heavy goods vehicle. Counsel for the appellant has further submitted that, thus, the findings recorded by the Tribunal that the driver of the vehicle was holding a driving license only for motorcycle or light motor vehicle is apparently a wrong observation. Thus, the recovery rights have been wrongly given to the Insurance Company.

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Counsel for the respondent-Insurance Company when confronted with Ex.P5, wherein there are two endorsements, first endorsement is valid from 18.6.2009 to 5.5.2012, whereas the second endorsement with regard to renewal of license is w.e.f. 21.6.2012 to 20.6.2015, whereas the accident in question has taken place on 26.2.2014. It is also not disputed that the Insurance Company never examined the driver as a witness so as to confront him that the license, which he was holding, a valid driving license as the onus of Issue No.3 was on respondent No.3. The issue No.3 reads as under :-

> "Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident ? OPR (3)"

Counsel for the appellant submits that once the onus to prove this issue was on respondent No.3-Insurance Company, the appellant has duly proved the license and to the contrary no evidence was led by the Insurance Company, thus, findings have been erroneously recorded by the Tribunal.

After hearing the counsel for the parties, I find force in the above-mentioned these appeals.

Since there is no dispute with regard to grant of compensation and the negligence and only issue, in contest, is Issue Nos.3 and 4 as to whether the driver of the offending vehicle was holding a valid and effective driving license on the date of accident to drive a heavy goods vehicle and whether the appellant have violated the terms and conditions of the insurance policy. On re-appreciation of evidence, especially the driving license Ex.P5, this Court finds that the driver was holding a valid and effective driving licence to drive the heavy goods vehicle on the date of accident i.e. 26.2.2014.

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Accordingly, these appeals are partly allowed and findings recorded by the Motor Accident Claims Tribunal, Gurgaon under issue Nos.3 and 4, qua the appellant and driver of the offending vehicle are set aside and recovery rights given to the Insurance Company against the appellant, being the owner and the driver of the offending vehicle, are reversed and it is held that the Insurance Company is liable to pay the compensation to the claimants.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
July 11, 2022 **JUDGE**
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO

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