IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 23.08.2022
Pronounced on : 08.09.2022

FAO-8331-2014 (O&M)

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Appellant

Versus

Baby Deepika and others ...... Respondents

FAO-9616-2014 (O&M)

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Appellant

Versus

Rajwati and others ...... Respondents

FAO-9673-2014 (O&M)

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Appellant

Versus

Bhoop Singh and others ...... Respondents

FAO-9714-2014 (O&M)

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Appellant

Versus

Roshni and others ...... Respondents

CR-7218-2014

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Petitioner

Versus

Master Deepesh and others ...... Respondents

CR-7219-2014

M/s Delhi Gujrat Fleet Carriers Pvt. Ltd. ...... Petitioner

Versus

Roshni and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sudhir Aggarwal, Advocate
for the appellant/petitioner in
FAO Nos.8331, 9616, 9673 and 9714 of 2014 and
CR Nos.7218 and 7219 of 2014.

Mr. Sagar Aggarwal, Advocate
for the claimants in FAO Nos.8331, 9616, 9673, 9714 of 2014.

Mr. Sanjiv Pabbi, Advocate
for the insurance company.

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Manjari Nehru Kaul, J.

CM-22645-CII-2014 in FAO No.8331 of 2014
CM-26837-CII-2014 in FAO No.9714 of 2014
CM-26743-CII-2014 in FAO No.9673 of 2014
CM-26633-CII-2014 in FAO No.9616 of 2014

Application is allowed as prayed for and the delay of 77/80 days in filing the appeal is condoned.

Main case

This order shall dispose of above-said appeals and revision petitions as all of them have arisen out of the common award dated 05.03.2014 passed by the Motor Accident Claims Tribunal, Palwal. Brief facts of the case are taken from FAO No.8331 of 2014.

The appellant-owner is in appeal before this Court to impugn the award dated 05.03.2014 passed by Motor Accident Claims Tribunal, Palwal (hereinafter called as 'the Tribunal') in claim petition wherein following compensation was assessed and awarded to the claimants on account of death of Sukhiya and Balwant Singh and the injuries received by them in the motor vehicular accident, which took place on 28.06.2010:-

Compensation awarded for the death of Sukhiya

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.3,000/-
2	Annual income (Rs.3,000 x 12)	Rs.36,000/-
3	Deduction towards personal expenses (1/3)	Rs.12,000/-
4	Annual Dependency (Rs.36,000 – Rs.12,000)	Rs.24,000/-
5	Multiplier	5
6	Total dependency (Rs.24,000 x 5)	Rs.1,20,000/-
7	Transportation and last rites	Rs.10,000/-
	Total compensation	Rs.1,30,000/-

Compensation awarded for the death of Balwant Singh

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.5,000/-
2	Annual income (Rs.5,000 x 12)	Rs.60,000/-
3	Multiplier	15
4	Total dependency (Rs.60,000 x 15)	Rs.9,00,000/-
5	Transportation and funeral expenses	Rs.10,000/-
	Total compensation	Rs.9,10,000/-

Compensation awarded to Rajwati

Sr. No.	***Head***	***Amount***
1	Actual expenses spent on medical treatment	Rs.1,31,000/-
2	For pain and suffering	Rs.10,000/-
3	Transportation, special diet and attendant charges	Rs.2,000/-
4	Loss of income	Rs.6,000/-
5	On account of 10% disability	Rs.25,000/-
	Total compensation	Rs.1,74,000/-

Compensation awarded to Deepika

Sr. No.	*Head*	*Amount*
1	Actual expenses spent on medical treatment	Nil
2	For pain and suffering	Rs.3,000/-
3	Transportation, special diet and attendant charges	Rs.2,000/-
4	On account of 8% disability	Rs.20,000/-
	Total compensation	Rs.25,000/-

Compensation awarded to Deepesh

Sr. No.	*Head*	*Amount*
1	Actual expenses spent on medical treatment	Nil
2	For pain and suffering	Rs.1,000/-
3	Transportation, special diet and attendant charges	Rs.1,000/-
4	On account of 3% disability	Rs.7,500/-
	Total compensation	Rs.9,500/-

Compensation awarded to Roshni

Sr. No.	*Head*	*Amount*
1	Actual expenses spent on medical treatment	Nil
2	For pain and suffering	Rs.3,000/-
3	Transportation, special diet and attendant charges	Rs.2,000/-
4	Loss of income	Rs.3,000/-
	Total compensation	Rs.8,000/-

The Tribunal held that the claimants were entitled to receive aforesaid compensation along with interest @ 9% p.a. from the date of filing of the petition till its realization to be paid jointly and severally by respondents No.1 and 2, which was to be indemnified by respondent No.3-Insurance Company.

In brief, it was pleaded in the claim petition filed under Section 166 of Motor Vehicles Act that on the fateful day i.e. 28.06.2010 Sukhiya (hereinafter referred to as 'deceased No.1'), Rajwati, Roshni alongwith her children Deepesh and Deepika were going in a car bearing registration No.HR-30G-9193, being driven by Balwant Singh (hereinafter referred to as 'deceased No.2') to village Kot. A truck container bearing registration No.HR-55D-4498 (hereinafter referred to as 'offending vehicle') being driven in a rash and negligent manner by respondent No.2 -Mohd. Arif collided head on with the vehicle of the deceased. While deceased Nos.1 and 2 died at the spot on account of the injuries suffered, the other occupants of the car, who received multiple injuries, were shifted to the hospital. A criminal case vide FIR No.231 dated 28.06.2010 under Sections 279, 337 and 304-A IPC was registered against the driver of the offending vehicle.

Learned counsel for the appellant-owner of the offending vehicle contends that the impugned award suffers from patent illegality and there has been a complete misreading of evidence led by the Tribunal. He submits that the appellant-owner was never served in the claim petition despite repeated issuance of notices to him and there was a report as well of **“not served”** qua the same. An Advocate named Mr. R.K.Tanwar, appeared on his behalf and filed his memo of appearance but he was neither engaged by the appellant nor in any way connected with him. Learned counsel further submits that therefore, it was evident that the said Advocate, who put in an appearance on his behalf, had connived with the claimants. He therefore, submits that the appellant-owner had been erroneously proceeded against ex parte. He further submits that the Tribunal also erred in exonerating the insurance company of its liability by holding that the driving licence of the driver-respondent No.1, of the offending vehicle, was fake. He submits that neither was any evidence led in support of the driving licence being fake nor any evidence led to show that the appellant was aware of the driving license being fake, and still he had been employed by the appellant and permitted to drive the offending vehicle. He further submits that while employing respondent No.1, the appellant had satisfied himself about the driving skills of the former, and his driving license, which was shown to him by respondent No.1 at the time of employment. It has been prayed that the insurance company be directed to indemnify the appellant as, in the above facts and circumstances there had been no violation of insurance policy on his part. He also argued that the driving licence Ex.R-1 was some other person's driving license, which was produced by the Company to evade its liability. It has also been submitted that the factum of the driver-respondent No.1 holding a valid driving license stood proved from the driving license which was now being sought to be placed on record by way of additional evidence.

Per contra, learned counsel appearing for the Insurance Company while opposing the prayer and submissions made by the learned counsel for the appellants-claimants submits that the factum of the driving licence being a fake document is evident from the testimony of RW-2 S.K.Kulshresth, Sr. Assistant from the office of ARTO, Mathura, who while stepping into the witness box, categorically deposed that the driving licence Ex.R-1 bearing No.85/2007/0008291 was issued in the name of one

Dalpreet Kaur and not respondent No.1 -driver. He further contends that RW-1 Jagbir Singh, Ahlmad of the Court of Sub Divisional Judicial Magistrate, Hathin deposed that driving license Ex.R-1 was taken into possession by the police along with other relevant documents. He still further submits that it stands proved, in the wake of the above led evidence, that respondent No.1 driver was not holding a valid driving license at the time of accident in question, which certainly amounted to violation of insurance policy, hence, the Tribunal did not err in exonerating the company of its liability to indemnify the owner. He further contends that neither the owner/appellant nor respondent No.1/driver of the offending vehicle filed their written statement nor did they put in appearance before the Tribunal to controvert that driving license Ex.R-1 did not belong to the respondent No.1. He submits that the owner/appellant failed to discharge the onus qua he not having any knowledge about the driving license being fake as he did not lead any evidence in support thereof.

Heard learned counsel and perused the relevant material available on record.

This Court finds force in the submissions made by the learned counsel for the appellant-owner and has no hesitation in observing that the onus was on insurance company to prove the negligence on behalf of the owner of the offending vehicle to the effect that he had failed to verify or satisfy himself qua the authenticity of the driving licence. Neither any pleadings to the said effect were made by the insurance company nor any evidence was led. Merely because the driving licence of the driver of the offending vehicle may have been found to be fake could not be a sufficient ground by itself to absolve the insurance company of its liability to indemnify the insured or even a third party. No evidence at all was led to show that the appellant was aware that the driving licence of respondent No.1 was fake and still permitted him to drive the offending vehicle. The owner while employing the driver had satisfied himself about the driving skills of respondent No.1-driver and that he was holding a driving licence. An employer is not supposed to carry out a roving inquiry qua the authenticity of the driving licence by visiting the issuing authorities. Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh and others, 2004(2) RCR (Civil) 114*** has held that "to avoid its liability towards the insured, the insurer would first have to prove that the insured was guilty of negligence i.e. he had failed to exercise reasonable care in the matter of fulfilling the condition of the insurance policy regarding the use of vehicles by duly licensed driver."

In view of the above discussion, the driving licence sought to be placed on record by way of additional evidence would not be necessary for a just and effective adjudication of this appeal. Hence, the application under Order 41 Rule 27 CPC filed in all the cases by the appellant-owner stands disposed of.

This Court has no hesitation to observe that the Tribunal erred in exonerating the insurance company of its liability by holding that the driving licence of the driver-respondent No.1 was fake. Since the insurance company has been unable to bring to the notice of this Court any material on record from which it could be even remotely inferred that the owner of the offending vehicle had been negligent or had wilfully breached the terms and conditions of the insurance policy, the instant appeal has to be allowed.

As a sequel to the above, the appeal(s) filed by the appellant-owner of the offending vehicle stands allowed. The Insurance company is liable to indemnify the appellant and to pay the amount of compensation to the claimants.

(MANJARI NEHRU KAUL)
JUDGE

08.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No