IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3539-2018(O&M)
Date of decision:-6.12.2022

Sarwan Singh and another

...Appellants

Versus

Deeso and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Mandeep Singh, Advocate
for the appellants.

Mr.Sandeep Suri, Advocate
for respondent No.4 – insurance company.

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H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that on account of death of one Laddi Ram in a motor vehicular accident, which took place on 6.9.2016 statedly on account of rash and negligent driving of oil tanker bearing registration No.PB-13V-9739 (hereinafter referred to as the offending vehicle) by respondent No.1 - Sarwan Singh, legal representatives of said deceased, namely, his widow - Deeso, daughter – Ms.Suman Rani and son – Kuldeep Kumar had brought a claim petition under Section 166 of the the Motor Vehicles Act, 1988 against Sarwan Singh -driver, Bhagwan Singh – owner and United India Insurance Company Ltd. - insurer of the said offending vehicle. It was filed before Motor Accidents Claims Tribunal, Sangrur (hereinafter referred to as the

Tribunal) on 8.5.2017.

2. Notice of the claim petition was given to respondents, who put in appearance and contested the claim petition by filing written statements. Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate written reply. All the three respondents have craved for dismissal of the claim petition.

3. On the pleadings of the parties, following issues were framed:-

1. Whether on 6.9.2016, Laddi Ram met with an accident with oil tanker bearing registration No.PB-13V-9739 driven by respondent No.1, which resulted to his death? OPA.
2. Whether the claimants are entitled to receive compensation, if so, to what amount and from whom? OPA.
3. Whether respondent No.1 was not holding valid and effective driving licence and other documents at the time of accident? OPR-3.
4. Relief.

4. The the parties led evidence in support of their respective claims.

5. After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and against the respondents, whereas with regard to issue No.3, the verdict was given in favour of the insurance company and against respondents No.1 and 2. However a compensation of Rs.11 lakhs was granted in favour of the claimants and against the respondents along with interest @ 7% per annum from the date of filing

of the claim petition till actual realization. The insurance company was held liable to pay the amount of compensation, however it was granted recovery rights against respondent No.2 insured.

6. This award left the respondent Nos.1 and 2 driver and owner of the offending vehicle aggrieved and they have approached this Court by filing the present appeal.

7. Notice of the appeal was given to the respondent No.4 – insurance company, which put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the appellants has submitted that the appellants had moved an application under Order 41 Rule 27 read with Section 151 CPC for permission to place on record Annexure A1 by way of additional evidence, which is copy of training certificate. The said certificate clarifies that appellant No.1 Sarwan Singh driver of the offending vehicle was holding a valid driving licence and was competent to drive the offending vehicle at the time of alleged accident. Although the document was handed over to counsel for the appellants (respondents No.1 and 2 in the claim petition) before the Tribunal but due to omission or inadvertent mistake the same could not be brought on record, therefore, it be allowed to be placed on record by way of additional evidence for just decision of the case.

10. Whereas this application is being opposed vehemently on behalf of the respondent No.4 – insurance company, who states that no such additional evidence can be allowed to be adduced at this stage of

appeal; the genuineness of this document is suspected and doubtful; even otherwise, the appellants could have produced the document before the Tribunal during the trial but they did not do so and now they have procured this certificate from some where and want to deprive the insurance company of recovery rights by projecting that appellant No.1 Sarwan Singh was competent to drive the offending vehicle at the relevant time.

11. Before proceeding to analyze the submissions made by learned counsel for the parties, it would be relevant to refer to the findings recorded by the Tribunal with regard to issue No.3 contained in paras 12 and 13 of the impugned award. For ready reference, those are being reproduced as under:

> ***ISSUES NO.3:***
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> *12. Onus to prove this issue is affixed on respondent No.3 that respondent No.1 was not holding a valid and effective driving licence and other documents at the time of accident. Learned counsel for the insurance company has placed on record copy of insurance cover note Exhibit R2, copy of driving licence of respondent No.1 Exhibit R3, copy of registration certificate of offending oil tanker Exhibit R4, copy of fitness certificate Exhibit R5 and copy of permit Exhibit R6. The main argument advanced by learned counsel for the insurance company was that Sarwan Singh was not holding valid driving licence. He was driving an oil tanker but in the driving licence Exhibit R3, there is no endorsement of the licensing authority that he was competent to drive oil tanker carrying hazardous goods. Therefore, the vehicle was driven without proper driving licence and the insurance company cannot be*

held liable to pay compensation to the claimants. On the other hand, learned counsel for respondents No.1 and 2 argued that there was no rash and negligent act on the part of respondent No.1. The driving licence is Exhibit R3, which was valid driving licence to drive transport vehicle. Therefore, the insurance company cannot escape its liability as the vehicle was duly insured from 13.01.2016 to 12.01.2017, whereas the alleged accident took place on 06.09.2016. Therefore, the insurance company is liable to pay compensation if awarded by the Motor Vehicle Tribunal.

13. I have considered the arguments advanced before me. It is an admitted fact that the oil tanker bearing registration No. PB-13V-9739 was insured from 13.01.2016 to 12.01.2017. The insurance policy is Exhibit R2. The main point in controversy is whether Sarwan Singh was having valid driving licence or not. The copy of driving licence produced on the file is Exhibit R3 according to which Sarwan Singh was having driving licence bearing No.UP22 19920004564 issued by Rampur Licensing Authority U.P. It was issued on 16.09.1992 and it was valid for transport upto 11.10.2019 and non transport upto 23.09.2021. It is rightly pointed out by learned counsel for the insurance company that there is no endorsement on the driving licence of respondent No.1 that he was competent to drive vehicle carrying dangerous and hazardous goods. The provisions of Section 14 sub clause 2 of the Motor Vehicles Act, 1988 runs as under:-

"14(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years;

[Provided that in the case of licence to drive a transport vehicle

> *carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."*

Therefore, as per this provision, the driving licence of a driver transporting dangerous and hazardous goods is required to have specific endorsement on the driving licence which is valid for one year and after going refresher course it is to be renewed for another one year. There is no endorsement that respondent No.1 was competent to drive the oil tanker carrying hazardous goods. Therefore, there is nothing on record to show that Sarwan Singh respondent No.1 was carrying valid driving licence to drive the oil tanker. No doubt, the oil tanker is insured with respondent No.3 but it was being driven by respondent no.1 in contravention of the terms and conditions of Motor Vehicles Act. Respondent No.1 was not competent to drive the oil tanker. Therefore, the insurance company is given recovery rights against the insured i.e. respondent No.2 under the provisions of Section 174 of Motor Vehicle Act. With this observation, this issue is decided in favour of insurance company and against respondents No.1 and 2.

12. Learned counsel for the appellants has placed reliance upon judgment by a Single Judge of this Court in case ***National Insurance Co. Ltd. Versus Harbans Kaur and others***, FAO No.1210 of 2014 (O&M) and the connected matter ***Harbans Kaur and others Versus M/s Indian Oil Corporation and others***, FAO No.8292 of 2014(O&M), date of decision being 26.3.2018, wherein dealing with a similar situation in light of the settled legal position, it was observed that the insurance company

can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle. The other judgment relied upon by learned counsel for the appellants was ***National Insurance Co. Ltd. Versus Swaran Singh and Ors.***, passed by the Apex Court in Special Leave Petition (C) Nos.9027 of 2003 with other SLPs, date of decision being 5.1.2004, wherein it was observed that insurer is entitled to raise all defences available under Section 149(2) of the Act, however mere absence, fake or invalid licence at the relevant time are not the defences available to insurer against the insured or third parties because to avoid its liability towards the insured also, the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of policy. The burden is on the insurer to establish breach of policy by leading cogent evidence and mere non-production of licence or evidence by the insured cannot be considered as discharge of burden of insurer.

13. As against that, learned counsel for respondent No.4 – insurance company has referred to judgment ***Rajesh Singh and another Versus Hardeep Singh and another, 2018(1) PLR 683*** wherein it was observed that in case of transport vehicles carrying goods which are dangerous or hazardous in nature, the driving licence ordinarily issued is not sufficient and the oil tanker was one which would fall within a category of a transport vehicle meant to carry dangerous or hazardous substances; when the owner had engaged the driver, it was his responsibility to see that the licence had the necessary endorsement and if

the owner failed to discharge his duly/responsibility placed upon a transporter/owner of goods carriage, the Tribunal had rightly exonerated the insurance company since there was a breach of the conditions of the insurance policy. It was further observed that the argument advanced that on particular journey the oil tanker was empty would be meaningless because the oil tanker is used for transporting oil and licence does not show any endorsement.

14. After considering the submissions made by learned counsel for the parties as well as going through the judgments referred to by them, I find that the Apex Court in judgment ***National Insurance Co. Ltd. Versus Swaran Singh and Ors.***(supra) has clarified the matter observing that though in a claim petition under Motor Vehicles Act, 1988, the insurance company is entitled to raise all defences available under Section 149(2) of the Act, however, mere absence, fake or invalid licence of the driver at the relevant time are not such defences available to the insurer against the insured or third parties because to avoid its liability towards the insured, such insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of the policy. It has further been clarified that the burden is on the insurer to establish breach of policy by leading cogent evidence and mere non-production of licence or evidence by the insured cannot be considered as discharge of burden of insurer.

15. In the instant case, the Tribunal has though observed that appellant No.1 Swaran Singh was having driving licence issued on 16.9.1992, which was valid for transport up to 11.10.2019 and non

transport up to 23.9.2021. Further in absence of the endorsement that he was competent to drive vehicle carrying dangerous and hazardous goods, which is valid for one year and it is to be extended by one year after undergoing refresher course, in absence of endorsement respondent No.1 was not competent to drive oil tanker carrying hazardous goods and this was taken to be violation of terms and conditions of the insurance policy; resultantly the Tribunal gave recovery rights to the insurance company to recover the amount paid by it to the claimants from respondent No.2 insurer.

16. In my view, these observations of the Tribunal are not sustainable in view of judgment ***National Insurance Co. Ltd. Versus Swaran Singh and Ors.***(supra), where the Apex Court had observed that every proven breach of policy will not entitle the insurer to avoid his liability unless the breach is proved to be so fundamental to have played main role in the cause of accident and the extent of violation and non-fulfillment of conditions of policy have to be determined by the Tribunal on the facts of each case and no hard and fast rule can be laid down in that regard. It was further observed that even learning driving licence possessed by a driver is a valid driving licence under the rules and the insurer cannot take it as defence to avoid its liability.

17. In this case it has to be taken note of that the accident, which took place had nothing to do with the expertise and experience and capability of the tanker driver to drive oil tanker carrying hazardous goods. As a matter of fact, the accident had taken place when the oil tanker was parked and not in motion. As per the case of the claimants, the

oil tanker was standing in the middle of the road without any indication in a negligent manner and due to reflection head lights of coming vehicles, Laddi Ram could not see the tanker and struck on the backside of the tanker, in the process receiving multiple injuries to which he had succumbed. It is the basic rule of the road, which is supposed to be known by every vehicle owner going on the road that vehicle is not to be parked in the middle of the road, therefore, parking oil tanker in the middle of the road is not something, which has anything to do with specialized training to drive oil tanker and that lack of endorsement cannot be taken to be the main cause for happening of the mishap. The finding recorded by the Tribunal on this issue is not sustainable and is liable to be set aside. The insurance company was wrongly granted recovery rights. The violation of terms and conditions of the insurance policy, if any, could not be said to be so fundamental so as to have played main role in causing of the accident.

18. Therefore, the appeal has merit. The verdict given by the Tribunal on issue No.3 that '*Whether respondent No.1 was not holding valid and effective driving licence and other documents at the time of accident*' is reversed and issue No.3 is decided against the insurance company. Resultantly, the relief of recovery rights granted to the insurance company stands withdrawn.

It being so, the application for additional evidence filed by the appellants has become infructuous and is disposed of as such.

19. With such modification with regard to finding on issue No.3 and consequently in the relief clause, the appeal stands allowed partly.

Since the main appeal stands allowed partly, the miscellaneous application(s), if any, stand disposed of accordingly.

6.12.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No