258 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-4781-2018 (O&M)
Decided on : 31.03.2022

Baldev Singh ...... Appellant

Versus

Future General India Insurance Co. Ltd. and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. G.S.Shahpuri, Advocate
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for respondent No.1.

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Manjari Nehru Kaul, J.(Oral)

Instant appeal has been preferred by the owner of the offending vehicle i.e. canter bearing Registration No.HR-37A-2057, to impugn the award dated 29.03.2016 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred as 'the Tribunal') whereby the recovery rights were given to respondent no.1-Insurance Company with respect to the compensation awarded to the claimants.

Brief facts of the case are that on 06.11.2014 Gauri Kumar (deceased) was coming back from village Dera Salempur and going towards Barara on his bicycle on the left side of the road. At about 7.15 pm, when the deceased reached near Primary Health Centre, Barara on Barara-Shahabad Road, a canter bearing Registration No.HR-37A-2057 being driven rashly and negligently by Jagir Singh came on the wrong side of the road and struck against the bicycle of the deceased from behind. The deceased sustained multiple injuries and later succumbed to them on the same day. On the statement of an eyewitness Ram Pukar Dass, FIR No.171 dated 06.11.2014 under Sections 279 and 304-A IPC was registered at Police Station Barara.

On the basis of pleadings of the parties, the Tribunal framed the following issues:

1. Whether the accident in question took place by rash and negligent driving of TATA Canter bearing registration No.HR-37A-2057 by respondent No.1 Jagir Singh resulting into death of Gauri Kumar as alleged? OPP
2. If issue No.1 is proved, whether the claimants are entitled to get compensation. If so, to how much and from whom? OPP
3. Whether respondent No.1 was not holding valid and effective driving licence on the date of the accident, if so, its effect? OPR-3
4. Whether respondent No.2 has violated the terms and conditions of the insurance policy and the respondent No.3 is not liable to indemnify the respondent No.2? OPR-3
5. Relief

On the basis of material and evidence produced during trial the Tribunal assessed the compensation payable to the claimants as follows:

Sr. No.	Heads of claim	Amount awarded
1	Income taken per month	Rs.6,000/-
2	Annual income	Rs.72,000/-
3	Deduction 1/2 towards personal living	Rs.36,000/-
4	Multiplier	13
5	Total (Rs.4,68,000/- x 13)	Rs.4,68,000/-

Sr. No.	Heads of claim	Amount awarded
6	Funeral Expenses	Rs.25,000/-
7	Loss of love and affection	Rs.1,00,000/-
	Total	**Rs.5,93,000/-**

The Tribunal fastened the primary responsibility on the insurance company-respondent No.1 to pay the compensation amount to the claimants. However, respondent No.1-Insurance Company was given the recovery rights to recover the compensation amount from the driver and the owner of the offending vehicle i.e. the appellant (owner of the offending vehicle) and respondent No.4 (driver of the offending vehicle).

The only challenge, which has been raised by way of the instant appeal is to the findings recorded by the Tribunal with respect to issues No.3 and 4.

Learned counsel for the appellant submitted that even though the offending vehicle stood fully insured with respondent No.1-insurance company and the driver of the offending vehicle (hereinafter referred as 'offending driver') too was holding a valid and effective licence to drive the vehicle in question on the date of the accident, still the Tribunal held that the terms and conditions of the insurance policy had been violated as the offending driver was holding two driving licences. Learned counsel submitted that on the date of accident in question i.e. 06.11.2014, the driving licence of the driver (Ex. R-4) was valid and effective as it was issued on 22.11.2010 and its validity was upto 21.11.2017. As per the driving licence Ex.R-4, the driver was permitted to drive motorcycle, light motor vehicle and heavy motor vehicle. Not only this, the genuineness of the driving licence Ex.R-4 stood proved from the No Objection Certificate Ex.R-8 issued by the DTO, Phek, Nagaland.

Hence, there was no question of any violation of the terms and conditions of the insurance policy. Learned counsel submitted that no doubt, the offending driver did produce another driving licence i.e. Ex.R-2 along with the driving licence Ex.R-4, however, it was duly proved on record that Ex.R-2 was also genuine and valid. It was further submitted that the offending driver at the time of starting his employment with the appellant had shown to him his driving licence (Ex.R-4), which as already submitted earlier was a genuine and valid driving licence, hence, the appellant could not be faulted with for not verifying the genuineness of the driving licence with the Licensing Authority. Learned counsel submitted that in the aforementioned circumstances, a grave error was committed by the Tribunal by giving the recovery rights to the Insurance Company and returning the findings qua issues No.3 and 4 against the appellant.

Per contra, learned counsel for the Insurance Company-respondent No.1 while opposing the submissions made by counsel opposite submitted that the impugned award did not warrant any interference and the recovery rights had been rightly given to the Insurance Company. It was submitted that in his written statement filed by the appellant, the respondent-driver had not pleaded that he was holding two driving licences. Still further, he submitted that the offending driver was holding a second driving licence (Ex.R-2) on the date of the accident purportedly issued by the DTO, Tuangsang, Nagaland, which was not proved by way of any cogent evidence and it seemingly was a forged driving licence. It was also submitted that a racket had been unearthed and hence, a FIR No.73 dated 23.03.2012 stood registered as many such false and forged licences had been recovered by the police. Moreover, learned counsel submitted that the provisions of Section 6

(i) of Motor Vehicles Act, 1988 clearly stipulate that no person while holding a driving licence could hold another one except of course a learner's licence. It was submitted that all the circumstances when taken into totality left no manner of doubt that the offending driver had been trying to hoodwink the law and enforcement agency. Not only this, it was also argued that the offending vehicle neither had the Registration Certificate nor the Route Permit to ply the vehicle which yet again was a breach of the terms and conditions of the insurance policy.

Heard learned counsel and perused the impugned award as well as other relevant material on record.

It would be relevant to point out that subsequent to the accident in question, FIR No.171 dated 06.11.2014 was registered at Police Station Barara under Sections 279 and 304-A IPC. RW-1 Jaswinder Pal, Criminal Ahlmad while stepping into the witness box produced the criminal file with respect to the aforementioned FIR. In the FIR case, the driving licence, which was produced by the driver was Ex.R-2 issued by DTO, Tuangsang, Nagaland. However, while stepping into the witness box before the Tribunal, the offending driver during his cross-examination admitted that he was driving the vehicle in question on the basis of his driving licence Ex.R-4 and not Ex.R-2.

The validity of driving licence Ex.R-2 was till 25.06.2015 and the endorsement therein was for heavy transport vehicle and heavy passenger vehicle, which was made on 26.06.2012 whereas in the driving licence Ex.R-4 issued on 22.11.2010 was valid upto 21.11.2017 and the holder was permitted to drive motorcycle, light motor vehicle and heavy motor vehicle. Both the driving licences thus, pertained to the common period from 22.11.2010 to 25.06.2015. It thus, leaves no manner of doubt that as per the admitted case of the offending driver, he indeed was in possession of two driving licences at the time of accident in contravention of the provisions of Motor Vehicles Act. Still further, no route permit was produced by the appellant, which further shows that the offending vehicle was being driven in violation of the terms and conditions of insurance policy.

As a sequel to the above discussion, this Court does not find any merit in the instant appeal. Accordingly, the appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

31.03.2022
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No