IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1736/2015

Date of decision:16/02/2023

Gordhan Dass

………………Appellant

Vs.

The New India Insurance Co. Ltd. And another

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Satbir Gill,Advocate for the appellant/driver & Owner of offending motorcycle

Mr.Sukhdarshan Singh, Advocate for respondent no.1-Insu.Co.

Mr.Dheeraj Narula, Advocate for respondent no.2-claimant.

Nidhi Gupta, J.

CM 5131-CII/2015

Present appeal has been filed by the Driver & Owner of motor cycle bearing registration No. HR-24J-1171 (hereinafter referred to as 'the offending vehicle') against the Award dated 27.11.2014 passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal') passed in Claim Petition No.64/2012 filed u/s 166 of the Motor

Vehicles Act,1988 (hereinafter referred to as ‘the Act’). Vide the impugned Award, compensation of Rs.1,45,089 along with interest @ 8% per annum from the date of filing of petition till realization was granted to the claimant/ respondent no.2 herein. However, the learned Tribunal also held the appellant liable to pay 50% of the said compensation to the claimant inter alia on the ground that the appellant had failed to produce his driving licence.

During the pendency of the present appeal, aforesaid application has been filed by the appellant u/o 41 Rule 27 CPC to lead additional evidence to place on record his driving licence, which he could not produce before the Tribunal as, original driving licence had been taken by the police during investigation of the accident in question. Accordingly, applicant/appellant moved said application before this Court to lead additional evidence to prove that at the time of accident he was holding valid and effective driving licence. This application was allowed by this Court vide order dated 30.4.2019 whereby the Tribunal at Sirsa was directed to allow the applicant/appellant two effective opportunities to produce the original driving licence on record in order to establish the fact that he was holding a valid driving licence on the date the accident took place. Further, two opportunities were also granted to Insurance Company to raise any counter thereof. Parties were directed to appear before the Tribunal on 28.5.2019 and report was awaited from the Tribunal on or before 14.10.2019.

Pursuant to this order, report dated 23.9.2019 was received from the learned Tribunal to the effect that the appellant was holding a valid driving licence.

Thus, the application in hand stands allowed in the aforesaid terms.

Main Appeal.

Brief facts of the case are that the learned Tribunal on appraisal of pleadings and evidence before it concluded that the claimant Nathu Ram was injured in an accident that took place on 30.7.2012 due to rash and negligent driving of the offending vehicle by the appellant. Accordingly, the learned Tribunal had granted a compensation of Rs.1,45,089 along with interest @ 8% per annum from the date of filing of petition till realization to the claimant/ respondent no.2 herein. However, the learned Tribunal also held the appellant liable to pay 50% of the said compensation to the claimant inter alia on the ground that the appellant had failed to produce his driving licence.

It is submitted by the learned counsel for the appellant that the said finding of the Tribunal is unsustainable primarily on the ground that onus to prove the issue No.7, which is, "*Whether respondent no.1 was not having a valid and effective driving licence at the time of accident in question and the insured has violated any terms and condition of the insurance policy in question? If so, its effect. OPR No.2*", was upon the respondent Insurance Company. It is submitted that it was upon the Insurance Company to lead evidence to show that the appellant did not possess valid and effective driving licence as alleged. It is submitted that admittedly, respondent Insurance Company led no evidence in this regard. Learned counsel makes reference to the finding of the Tribunal in para 23 of the impugned Award dealing with issue no.7. Para 23 of the impugned Award reads as under:-

> *"28. Issue No.7:*
>
> *Onus to prove this issue was on respondent no.2 i.e. whether respondent no.1 was not having a valid and*

effective driving licence at the time of accident in question and respondent no.1 had violated any terms and condition of the insurance policy? It is a fact on record respondent no.1 had not produced any evidence. Respondent no.1 had not appeared in the witness box and he had not produced his driving licence. As such respondent no.1 failed to prove the onus that he was having a valid and effective driving licence. As regards violation of other terms and conditions, there was no concrete evidence produced by respondent no.2. Hence issue no.7 is decided partly in favour of respondent no.2 insurance company accordingly".

It is submitted that clearly the respondent Insurance Company/ respondent no.2 failed to produce any evidence in support of their false and baseless contention and therefore, the appellant could not have been foisted with the liability of making payment of 50% of the compensation assessed.

It is further submitted that as per driving licence (Annexure A-1) produced by the appellant before this Court by way of additional evidence, it is evident that the said licence was issued in 1992, and therefore, the appellant had in fact, held a valid and effective driving licence on the date of accident 30.7.2012.

No other argument has been raised on behalf of the appellant.

Heard ld. Counsel for the appellant.

A perusal of the driving licence produced by the appellant at Annexure A-1 before this Court shows that the said licence was renewed on 11.10.2013, and has a validity upto 17.12.2017, whereas the date of accident in the present case is 30.7.2012. No doubt the said license shows original date of issue as 2.9.1992, but it belies belief that it remained valid for a continuous period of 20 odd years in-between, and after 1992 it was only renewed on 11.10.2013. License does not depict the date of renewal prior to 11.10.2013, and nothing else has been placed on record by the appellant to show that he held a valid licence as on 30.7.2012.

For the reasons stated above, I find no error in the direction of the ld. Tribunal that appellant is liable to pay 50% of the compensation amount.

Present appeal is accordingly, dismissed.

16/02/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**