IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4636-2014 (O&M)
Date of Decision: November 24, 2023

National Insurance Co. Ltd.

...Appellant

VERSUS

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.S.S.Sidhu, Advocate
for the appellant.

Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates
for respondent No.4.

****

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 21.03.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted on account of death of Gurdev Kaur, in a motor vehicular accident, which took place on 01.04.2012.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal had granted compensation to the extent of Rs.3,56,200/- along with interest and the liability was fastened upon the driver, owner and insurer of the offending vehicle, who were impleaded as respondents No.1, 2 and 3 respectively, to be joint and several.

Feeling aggrieved by the liability having been so fastened, as

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

joint and several, the National Insurance Company has filed the present appeal.

Along with appeal, an application i.e CM-13153-CII-2014 under Order 41 Rule 27 read with Section 151 CPC, for leading additional evidence, has also been filed.

The photocopy of the lower Court record has been received.

Learned counsel for the parties heard.

Firstly, coming to the application filed for additional evidence. In the aforesaid application, it is submitted that counsel for respondent No.2 i.e. owner of the offending vehicle, had tendered the copy of the driving licence as Annexure A-1 (which has been tendered in evidence as Ex.R-3) of the driver of the insured truck bearing No.HP-12-1532. The said driving licence was sent for verification to the Divisional Office of the appellant at Hazaribagh on 19.09.2013, copy whereof is Annexure A-2. The District Transport Officer vide letter dated 06.11.2013 informed that the original driving licence was issued vide Sr.No.141/05/PRO/Patna and this report was sent by the Investigator Sh.Raghavendra Pratap Singh vide his letter dated 22.11.2013 and copies of these letters are Annexure A-3 and A-4. Furthermore, on receipt of such information, the dealing Divisional Officer vide his e-mail dated 20.12.2013 (Annexure A-5) had asked Patna Regional Office to get the driving licence verified from the Licencing Authority, Patna. However, vide e-mail dated 11.02.2014 (Annexure A-6), it was informed that no confirmation of the driving licence was being given and he further informed vide e-mail dated 12.02.2014 that he is trying the get the verification of the driving licence (Annexure A-1) under the Bihar Right to

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

Information Rules, 2006. The copy of the application is Annexure A-8. The District Transport Officer provided the details of driving licence aforesaid and stated that this was issued in the name of Rabindra Kumar Singh for LMV only. The copy of the said information is Annexure A-9.

Furthermore, it is averred in the application that the Tribunal vide order dated 10.03.2014 had closed the evidence of the appellant by order. After receipt of aforesaid information, an application for additional evidence was filed to prove that the driving licence of respondent No.1-Supinder Singh, is fake. However, the said application was dismissed vide order dated 19.03.2014 (Annexure A-10). Also, it is averred that there is clear breach of policy terms and conditions, as the driving licence produced by respondents No.1 and 2 is found to be fake and therefore, the appellant is not liable to indemnify the insured and precisely, on this account, a prayer was made for permission to lead additional evidence.

However, in reply, learned counsel for respondent No.4 has assiduously resisted the claim of the insurance company, thereby, disputing the maintainability of the said application, at this stage and furthermore, that the insurance company was in possession of the driving licence from the very beginning, as the same was sent on 19.09.2013 and therefore, the insurance company was itself at fault in not seeking the verification.

Such being the application filed, at the very outset, learned counsel for the appellant has submitted that aforesaid evidence is essential to be brought on record for the just decision of the case.

Rather, on the other hand, learned counsel for respondent No.4 has resisted the claim. He has drawn attention to the zimini orders passed by

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

learned Tribunal, to emphasize his submission that despite several opportunities availed before learned Tribunal, no evidence of any kind was led by the insurance company, to assert about the questioned driving licence of Supinder Singh to be fake. Rather, it is submitted that the evidence was closed by order and that order has also not been challenged. Furthermore, it is submitted that similar application for leading additional evidence was also filed before learned Tribunal and the same was dismissed and the order of dismissal of the said application has also not been challenged. Ultimately on account of no evidence coming on record, learned Tribunal had fastened the liability upon the insurance company also together with the driver and owner. In the light of the same, it is submitted that at this stage, the application, as such, ought not to be allowed.

In view of the submissions, so made, this Court has gone through the various orders passed by learned Tribunal, with regard to the proceedings, so conducted. Perusal of the same reveals that despite availing several opportunities, including last opportunity, no evidence of any kind was led by the insurance company, to substantiate the plea of the driving licence in question to be fake one and ultimately, learned Tribunal had closed the evidence of the insurance company, by order on 10.03.2014. This order shutting the evidence (if any to be produced) was not challenged by the insurance company. Not only this, when the case was fixed for 19.03.2014, an application, again was filed for seeking permission to lead additional evidence. Upon the same, the detailed order was passed by learned Tribunal, which is reproduced in verbatim, as herein:-

"Arguments not advanced. Rather an application has been

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

filed by respondent No.3 for permission to lead additional evidence. It has been stated in the application that evidence of respondent No.3 was closed by order vide order dated 10.3.2014 and it has come to the notice of respondent No.3 on receipt of verification report that original driving licence of respondent No.1 is fake and this evidence is very much necessary for proper adjudication of the case. This application has been orally resisted by the petitioner and other respondents.

Arguments heard. Record perused. In the application it has not been disclosed by the respondent No.3 as to what type of evidence, he wants to lead. Even the alleged verification report of the driving licence is not annexed with this application. Respondent No.3 has not disclosed if he want to examine any witness or just want to bring verification report on record. Moreover, evidence of the respondent No.3 was closed by order on 10.3.2014 as he failed to conclude his evidence inspite of last opportunity and also to deposit costs of Rs.500/- in Free Legal Aid Fund subject to which that adjournment was granted. So no ground is made out to permit respondent No.3/applicant to lead additional evidence and hence, this application is dismissed. Now to come up on 21.3.2014 for arguments."

In the light of the observations, in the aforesaid order, it is necessary to take into consideration, the application filed for leading additional evidence, on behalf of the insurance company. The same is very sketchy and for appropriate appraisal now, the same is reproduced, as herein given:-

"1. That the aforesaid case is pending for today i.e. 19-3-2014.

2. That in this case the evidence of Respondent No.3 was

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

closed by order on 10-3-2014. It has however come to the notice of Respondent No.3 that original DL is fake. The same has come to the knowledge of Respondent No.3 on receipt of DL Verification Report. This additional evidence is very necessary for the proper adjudication of the case.

It is therefore, respectfully prayed in the interest of justice that Respondent No.3 may be permitted to lead additional evidence."

When the order of dismissal of the application for additional evidence was passed, the case was fixed further for arguments. The aforesaid order of dismissal of the application was also not challenged and on the next date, the arguments were addressed by counsel for the insurance company and the case was finally disposed of by learned Tribunal.

This seriatim of facts in itself reveals about the insurance company to have laid back and had not initiated any steps to lead evidence, to establish about the driving licence to be fake. Also, as submitted by learned counsel for respondent No.4, it should be taken note of that prior to tendering of the copy of the driving licence by the owner, the insurance company was having the particulars of the driving licence. In this regard, suffice to make reference to Annexure A-4, which reveals about Investigator Raghavendra Pratap Singh having sent the report/letter dated 22.11.2013. As such, the insurance company was having sufficient opportunity, till the decision of the claim petition, to lead evidence. If it was in the process of verification of the driving licence, it could have sought permission from the Court concerned, to adjourn the case for this purpose, but no such submission was made. Even, the order with regard to the closing of their evidence passed by the Tribunal, has not been challenged by

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

the insurance company. Moreover, an application for leading additional evidence filed before learned Tribunal, as reproduced aforesaid, is very sketchy. Nothing, as such, is mentioned about the detail of the driving licence and what evidence, they intend to produce. In the given circumstances, learned Tribunal vide order dated 19.03.2014, as reproduced aforesaid, had passed the detailed order, while making all the observations, with regard to the necessary material omissions in the application. Even, this order of dismissal of the application, had never been challenged. Not only this, thereafter also, the arguments were addressed and the claim petition was finally disposed of.

When once, the order passed on the application for additional evidence, with regard to the same prayer, as made in the application in hand, was dismissed and the insurance company, slept over the order, now by way of filing the fresh application along with appeal, another opportunity, which was shut out to the insurance company, at earlier stage, cannot be provided.

Consequently, basic ingredients of Order 41 Rule 27 CPC are not established and precisely, on this account, the application for leading additional evidence, deserves to be dismissed. Hence, the application i.e. CM-13153-CII-2014 is hereby dismissed.

As a consequence of the dismissal of the aforesaid application for additional evidence, it is pertinent to mention that appeal, in hand has been filed only to assail the liability, so fastened upon the insurance company together with driver and owner of the offending vehicle, as joint and several. But however, despite specific issue having framed, with regard to the assertion on the part of the insurance company about the driving

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh

licence to be fake, no evidence at all, had been led by the insurance company. Thus, on the basis thereof, learned Tribunal, in view of the insurance policy and driving licence Ex.R-3, coming on record, had rightly concluded about there to be no violation of terms and conditions of the insurance policy.

In the light of the aforesaid conclusion, there is no merit in the appeal and consequently, the same is also dismissed.

November 24, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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

VINEET GULATI
2023.12.02 13:58
I attest to the accuracy and
authenticity of this document
Chandigarh