2023:PHHC:058805

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 (2 cases)

FAO-504-2016 (O&M)
Date of Decision:19.04.2023

Baldev Singh ...Appellant

Versus

Subhash and others ...Respondents

FAO-505-2016 (O&M)
Date of Decision:19.04.2023

Baldev Singh

...Appellant

Versus

Rishi Pal and others ...Respondents

CORAM: HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr. Jangjit Singh Dahiya, Advocate
for the appellant.

Mr.Sandeep Suri, Advocate
for respondent No.2.

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ARUN MONGA, J. (Oral)

Vide this common order and judgment, above-mentioned two appeals are being disposed of since they arise out the same award dated 19.05.2015. For brevity, recitals are taken from FAO-504-2016.

2. Appellant before this Court is owner of the offending Scorpio vehicle No. HR-36K-0025 seeking to set aside impugned award dated 19.05.2015 rendered by learned Motor Accidents Claims Tribunal, Kurukshetra (for brevity, "Tribunal") whereby claim petitions were partly allowed and compensation was awarded to claimants-Rishi Pal and Subhash respectively.

3. Succinct facts, as noted by learned Tribunal, are as below:

> "*On dated 20.04.2014, the claimants-petitioners were going from village Niwarsi to Ladwa on a motorcycle bearing registration no. HR-02E-6621 for their personal work and when they reached on Pipli-Ladwa road near Niwarsi turn then in the meantime, the offending vehicle make Scorpio bearing registration no. HR-36K-0025 which was being driven by respondent No. 1 in a rash and negligent manner came from the back side and dashed the same in the motorcycle of the claimants-petitioners, due to which, both the occupants of the motorcycle fell down on the road and slipped under the tractor trolley coming from Ladwa side and the aforesaid offending vehicle also struck with the said tractor-trolley and as a result of which, both the claimants-petitioners suffered multiple injuries on various parts of their respective bodies. It is further asserted that after the accident, both the injured were shifted to LNJP Hospital, Kurukshetra and from there they were taken to Anand Hospital, Kurukshetra, where they were treated and operated by the concerned doctor. It is further asserted that a FIR No. 71 dated 25.04.2014, under Sections 279, 337 and 338 IPC was registered against respondent no. 1 at Police Station, Ladwa.*
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> *According to claimant petitioner Rishi Pal, at the time of accident, he as aged about 38 years and while working as driver was thus earning Rs.20,000/- per month and after the said accident he remained admitted at Anand Hospital, Kurukshetra as an indoor patient for about twenty days, where he was operated and a sum of Rs. Three lakhs were spent on his treatment, medicines, transportation, special diet etc. It is further asserted that prior to the accident, he was having good health and robust physique but after the accident, he has become very weak and a permanent disabled person and is unable to do his routine work. In this way, the claimant-petitioner Rishi Pal prayed for grant of compensation amounting to Rs. Twenty lakhs along with costs and interest.*
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> *According to claimant-petitioner Subhash, at the time of accident, he as aged about 32 years and while working as an electrician was thus earning Rs. 20,000/- per month and after the said accident the claimant-petitioner remained admitted in Anand Hospital, Kurukshetra as an indoor patient for about twenty days and spent a sum of Rs. Three lakhs on his treatment, medicines, transportation, special diet etc. It is further asserted that prior to the accident, he was having good health and robust physique but after the accident, he has become a permanent disabled person and is also unable to do his routine work. In this way, the claimant-petitioner Subhash has also prayed for grant of compensation amounting to Rs. Twenty lakhs alongwith costs and interest.*"

4. Upon notice, respondent No. 3 Sunil Sharma (driver of offending vehicle), appellant Baldev Singh (owner of offending vehicle) and respondent No.4 Harjinder Singh (driver and owner of tractor-trolley bearing registration No.HR-07S-2470) contested both the petitions and asserted that there was no fault of respondent Sunil Sharma in causing the accident in question and the same had taken place due to sole negligence of the driver of the motorcycle, who was not driving the motorcycle as per rules and respondent No.3 herein was falsely implicated in the said accident. Respondent No. 3 was having a valid and effective driving licence and the vehicle in question was insured with respondent No. 2 herein and prayer for dismissal of the claim petitions was made.

5. Respondent No.2-Insurance company filed written statement and asserted that neither the alleged accident took place with the Scorpio in question nor was there any rash and negligent driving by respondent No. 3 and the alleged accident took place due to the fault and negligence of the driver of the tractor-trolley i.e. respondent No.4 Harjinder Singh. Respondent No.3 was not holding a valid and effective driving licence at the time of accident and as such respondent No.2-insurance company was not liable to pay compensation.

6. Learned Tribunal framed the following consolidated issues:

> "*1. Whether accident dated 20.04.2014 resulting into injuries suffered by Rishi Pal alias Rispal Singh and Subhash took place due to rash and negligent driving of offending vehicles i.e. car Scorpio bearing registration no. HR-036K-0025 by respondent No. 1 and tractor trolley bearing registration No. HR-07S-2470 by respondent no. 4, if so, to what effect? OPP*
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> *2. If issue no. 1 is proved, to what amount of compensation and from whom the claimants-petitioners are entitled to? OPP*
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> *3. Whether the respondent no. 1 & 4 were not having any valid and effective driving licence at the material time and there was violation of the terms and conditions of the insurance policy and respondent No. 3 and 5 are not liable to pay any compensation? OPR*
>
> *4. Relief?*

7. On appraisal of record/evidence, learned Tribunal decided the issues in favour of claimants and partly allowed the claim petitions. A compensation of Rs. 2,19,198/- was awarded to claimant Rishi Pal while compensation of Rs. 2,11,864/- was awarded to claimant Subhash alongwith interest at the rate of 9% per annum. It was directed that respondent No.3 (driver of Scorpio), appellant (owner of Scorpio) and respondent No.2 (insurer of Scorpio) shall be jointly and severally liable to pay the aforesaid amounts of compensation. Respondent No.2-insurance company was directed to satisfy the claim of each of the set of claimants and thereafter, were allowed to recover the same from driver and owner of the offending vehicle.

8. Learned counsel for appellant-owner of Scorpio vehicle contends that accident in question took place due to sole negligence of driver of motorcycle. Appellant –owner has been falsely implicated in the incident. He would also contend that driver of offending vehicle i.e. respondent No.3 Sunil Sharma was holding a valid and effective driving licence at the time of accident. Licence was valid from 18.04.2013 to 17.04.2033 for non-transport and from 18.04.2013 to 17.04.2016 for transport vehicle. He would further contend that appellant/owner had duly proved the Insurance Policy of the vehicle being an insured one with respondent No. 2-Insurance Company. Therefore, learned Tribunal wrongly rendered finding that Insurance Company shall satisfy the claim and, thereafter, may recover the same from driver and owner of offending vehicle. Since, offending vehicle was duly insured and driver was holding a valid and effective driving licence at the time of accident, therefore, no recovery can be effected from appellant/owner.

9. On the other hand, learned counsel for respondent No.2 opposes the appeal and prays for dismissal of the same.

10. I have heard learned counsel for parties and perused the case file.

11. This Court in case titled as ***'New India Assurance Co. Ltd. Vs. Harnek Singh and others'*** reported in **2006 (1) R.C.R. (Civil) 61** observed as under:

> "5. *An owner of a vehicle can only verify about the driving licence of the driver by verifying the stamp of the Regional Transport Authority on the driving licence. The owner has no other means to verify the genuineness of a driving licence. Once an employer employs a driver after proper care, then the InsuranceCompany cannot beabsolvedof its liabilityto indemnify the insured on account of an invalid or fake driving licence because the Insurance Company has not led any evidence to prove that the insured was guilty of any negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver."*

12. Further, Hon'ble the Supreme Court of India in case titled as ***'Pepsu Road Transport Corporation Vs. National Insurance Company'*** in Civil Appeal No. 8276 of 2009 decided on 26.08.2013 passed the following order:

> " 8. *In a claim for compensation, it is certainly open to the insurer under Section 149(2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether here is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority.*
> *That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

13. In the present case applying the principles laid down in the judgments of which the extracts have been reproduced above, I am of the view that the insured/owner of the vehicle had duly discharged his onus by summoning the witness from the Transport Authority, who had not only deposed that the renewal of licence was validly carried out by the driver but his testimony has remained unimpeached.

14. Furthermore, there two other aspects of the matter, first, is whether once the renewal of licence has taken place, does it lie in the mouth of the insurer to allege that since the earlier licence was fake and, therefore, renewal of the same does not amount to having a valid licence? Second question that arises for consideration is that where the insured discharged the onus on his part or carried out due diligence as well as the verification of the driver and in case, it could not be discovered by owner of the vehicle that the same is fake and he continued with the services of the driver and in that eventuality, will the insurer be still liable to compensate the victim?

15. Addressing the second question first, I am of the view that the evidence on record clearly reveals that the insured/owner had carried out a proper verification of the licence of the driver. I have seen the licence of the driver issued by the competent authority from the District Transport Officer, Patiala which clearly stated that he was entitled to drive LMV/Cab/MCWG transport category of the vehicles and the licence was valid till 17.04.2016 for transport vehicles and upto 17.04.2033 for non-transport vehicles. In the ordinary course, when the services of the driver are hired, other than seeing the original licence, the vehicle owner would not carry out the inspection in the issuing authority office unless invited to the allegation that the licence is fake. In the present appeal, accident took place and, thereafter, informational squad from the issuing authority of Patiala took instructions which has been brought

on record as Ex.R-3 and the same also in no way suggested that the licence issued was fake and to that effect, even testimony of the official was carefully seen by RW-1 and also the official who came as Sampooran Singh, Junior Assistant, Patiala.

16. In the premise, I am of the view that that being the owner of the vehicle, appellant had no knowledge of the licence being fake. Though learned Tribunal below has held that the official witness, who appeared from the Transport Office, Mathura stated that the number mentioned in the original licence issued from Mathura and that mentioned in the renewed licence in Patiala does not match with the particulars of the name of the driver. As per the record, both the licences have been issued to persons having different names i.e. Yogesh Chand Sarkar as against Sunil Kumar, who is the driver of the offending vehicle. Based on the same, the Ld. Tribunal found that since the original licence of the driver was fake, therefore, Insurance Company, if so, advised can recover compensation from the owner of the vehicle. I am unable to convince with the logic adopted by learned Tribunal below.

17. In view of the above, I am of the opinion the owner of the vehicle had done due verification on his part to ascertain the genuineness of licence issued from the Registering Authority, Patiala and on the other hand, mere testimony of the person from Mathura office without placing on record of Court any document or the photographs of the original licence, warranted further collection of evidence from Mathura office to establish the same. Furthermore, it is recorded by learned Tribunal that RW-3, who appeared from the Transport Office, Mathura had deposed that as per entry in their record, the driving licence No.6097-MTR-03 was issued in the name of Yogesh Chander. Any copy of the said entry was not placed on record.

18. Be that as it may, even if the licence was fake, yet in view of the observation here in above, once owner of the vehicle had done what was required of him about the driver's licence, thereafter, the insurer is liable.

19. In view of reasons recorded herein above, the impugned award is modified to the extent that the right given to the insurer to recover compensation from the insured is held to be not sustainable and the award is accordingly modified and the insured is exempted from the liability of paying compensation.

20. Hence, both the appeals are, thus, disposed of.

21. In the parting, I may hasten to add that the issue whether on renewal of a licence after the expiry of the earlier original license, the same may be extension of the previous licence or it is a new licence that recreates the previous non-renewed licence is left open to be decided in an appropriate case. In present case, I have held that even if the driving licence is fake, the insurer would be liable to indemnify the insured, if the insured had exercised due diligence and had done what was required on his part.

22. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.04.2023
Harish Kumar

Whether speaking/reasoned : Yes/ No

Whether Reportable : Yes/ No