IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 80 of 2016(O&M)
Date of Decision:12.05.2023

Jaspal Singh .... **Appellant**

Versus

National Insurance Company Limited and others ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

***

Present: Mr.Abhishek Sharma, Advocate
for Mr.Vishal Gupta, Advocate for the appellant.

Mr.Neeraj Khanna, Advocate for respondent No.1.

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HARPREET SINGH BRAR, J.

1. The present appeal has been filed by the appellant/owner of the offending vehicle against the award dated 07.11.2012 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal' for short) whereby the claim petition filed by claimant namely Raj Kumar under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short) seeking compensation on account of injuries suffered by him in a motor vehicle accident, was partly accepted. However, the Tribunal granted recovery rights to the insurance company to recover the amount of compensation awarded by it from the owner and driver of the offending vehicle jointly and severally.

FACTUAL BACKGROUND

2. Brief facts of the case are that on 10.04.2012 the claimant namely Raj Kumar along with some passengers was travelling in a truck bearing registration No. HR 56-N-0455 and was sitting in the rear portion of

the said truck. When the said truck reached a little ahead of Samana Bahu near Shakti Bhog Mill on G.T.Road, another truck bearing registration No. HP-12-C-4667, being driven by its driver namely Gurmukh Singh in a rash and negligent manner, without blowing any horn, came from behind and hit truck bearing registration No.HR-56-N-0455. As a result of the impact, one person namely Sushil Kumar and the claimant fell from the truck and received injuries. The offending truck ran over the legs of the claimant. The claimant was taken to Sony Hospital, Kurukshetra from where he was shifted to Dr.Ashok Gupta, Hospital, Karnal and from there he was referred to PGI, Chandigarh where his left leg was amputated.

3. The learned Tribunal awarded a sum of Rs. 5,95,000/- as compensation along with interest at the rate of 9% p.a. from the date of filing of the claim petition till realisation. At first instance, the compensation was to be paid by the insurance company, however, recovery rights were granted to it to recover the same from the owner and driver of the offending vehicle jointly and severally.

4. On the basis of rival contentions of the parties, learned Tribunal framed the following issues for adjudication:-

> 1. Whether the motor vehicular accident, which took place on 10.04.2011 was caused on account of rash and negligent driving of vehicle No. HP-12-C-4667 by Gurmukh Singh-respondent No.1 resulting into injuries to claimant, if so, its effect? OPP
> 2. If issue No.1 is proved, whether the claimant is entitled to claim any compensation. If so how much and from whom? OPP
> 3. Whether respondent No.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPP

4. Whether the claim petition is not maintainable? OPR

5. Whether the claim petition has been filed by the claimant in collusion with driver and owner i.e. respondents No. 1 and 2 if so, its effect? OPR

6. Relief.

5. Both the parties led their respective evidence.

6. The learned Tribunal awarded a sum of Rs. 5,95,000/- as compensation to the claimant along with interest at the rate of 9% p.a. from the date of filing of the claim petition till recovery.

CONTENTIONS

7. Learned counsel for the appellant has stated that as per the scheme of the Act the insurance company is required to establish breach of policy by the insured by leading cogent evidence. As such, the learned Tribunal has wrongly granted the recovery rights to respondent No.1-insurance company. Learned counsel for the appellant has further emphasised that the driving licence of the driver of the offending vehicle upon verification by respondent No.1-insurance company was found to be valid. Therefore, the impugned award is liable to be set aside and recovery rights granted to respondent No.1-insurance company from the appellant deserve to be modified.

8. Per contra, learned counsel for respondent No.1 –insurance company has argued that the driving licence of the driver was issued in violation of Section 9 of the Act as the driver namely Gurmukh Singh is a resident of Hoshiarpur, Punjab whereas the driving licence No. 88282/MKG/PROF/2009 was got issued from the State of Nagaland. As such the Licensing Authority at Nagaland did not have the jurisdiction to issue the same. He further submitted that the application under Order 41

Rule 27 of the C.P.C. is required to be dismissed as the appellant is trying to fill up the lacuna by seeking to lead additional evidence at the time of hearing of the present appeal.

OBSERVATION AND ANALYSIS

9. Having heard counsel for the parties and perusing the record of the case carefully, the present appeal deserves to be allowed and the impugned award passed by the learned Tribunal is liable to be modified on the following grounds:-

10. That at the time of hearing of the appeal on 04.03.2016, learned counsel for respondent No.1-insurance company had put in appearance and accepted the notice on its behalf. The following order was passed:-

> *"**FAO No. 80 of 2016***
>
> *Notice of motion.*
>
> *This is owner's appeal on the ground that during the trial driving licence could not be produced.*
>
> *Since the dispute is with respondent No.1, service of respondents No. 2 and 3 are exempted.*
>
> *As regards service of respondent No.1, Mr. Vinod Gupta, Advocate has entered appearance and accepts notice on its behalf and very fairly states that if driving licence is found to be duly proved, insurance company will not claim any recovery right.*
>
> *Learned counsel for the appellant undertakes to supply a copy of the paper book as well as driving licence during the course of the day so that learned counsel for respondent No.1 can get the same verified.*
>
> *Adjourned to 10.05.2016.*
>
> *In the meantime, Executing Court is directed to adjourn the case beyond the date given by this Court."*

11. A two-Judge Bench of the Hon'ble Supreme Court in **Meenaben Pankajkumar Joshi & Ors. vs. New India Assurance Co. Ltd., 2009 (9) SCC 363,** speaking through Justice S.B.Sinha**,** has considered the issue relating to leading of additional evidence at the stage when the Hon'ble Supreme Court was hearing the appeal and held as follows:-

> *" 6. Before us, an application has been filed seeking permission to rely upon additional documents containing various bills, debit notes, etc. To show the nature of expenditure incurred by the said proprietorship concern.*
>
> *7. Having heard the learned counsel for the parties, we are of the opinion that keeping in view the provisions of Section 168 of the Motor Vehicles Act, 1988 in terms whereof the Tribunal is required to award a fair compensation, the additional documents sought to be produced before us should be taken into evidence. We say so because the appellant have contended that those documents were not available at the relevant time. Evidently, they have not been brought on records before the Tribunal also."*

Therefore, the application i.e. CM-188-CII-2016 for leading additional evidence is allowed. The verification report of the driving licence of driver Gurmukh Singh is taken on record as mark 'X'. A perusal of the verification report submitted along with the reply filed by respondent No.1 to the application for leading additional evidence clearly indicates that the driving licence No. 88282/MKG/PROF/2009 issued to Gurmukh Singh is genuine as per the record of the concerned office. Once the above said driving licence was found to be validly issued, the recovery rights of the compensation cannot be granted to the insurance company. Moreover, learned counsel for respondent No.1-insurance company has made a statement on 04.03.2016 at the time of issuance of notice of motion, that if the driving licence was found to be duly proved, the insurance company would not claim any recovery rights. On this ground alone the impugned award is required to be modified.

12. Learned counsel for respondent No.1 has relied upon **United India Insurance Company Limited vs. Kesar Devi and others, 2018(4) R.C.R.(Civil) 341** in support of his contention that the driving licence of driver Gurmukh Singh was issued in violation of Section 9 of the Act.

13. The Hon'ble Supreme Court in **National Insurance Co.Ltd. vs. Swaran Singh and others, 2004(4) RCR (Civil) 114** and **Pepsu Road Transport Corporation vs. National Insurance Company, 2013(4) RCR (Civil) 273,** has laid down the ratio that as per the provisions of Section 149(2) (a) (ii) of the Act, even though the insurance company has a right to take all available defences, yet the ground of invalidity of the driving licence at the time of accident is not available to the insurance company against the insured or the third party. In order to avoid its liability towards the insured, the insurer has to prove that the insured is guilty of negligence and has failed to exercise reasonable care in complying with the conditions of the policy. The burden is on the insurer to establish breach of policy by leading cogent evidence. The onus to prove that the driving licence of the driver was invalid and a false document was on the insurance company. The Hon'ble Supreme Court in **Pepsu Road Transport Corporation (supra),** while considering the provision of Section 149(2)(a)(ii), has observed that when an owner hires a driver he has to satisfy that driver had valid driving licence and is competent to drive the vehicle but owner cannot go to extent of verifying the genuineness of the driving licence with the licensing authority.

14. A Single Bench of this Court in **Ravi Dutt vs. Ravi and others, 2015(2) PLR 112,** has considered a similar issue and it was held that if the

driver of the vehicle is holding two licences and insurance company verified only one which was found forged and other licence produced is found to be properly issued and was valid on the date of the accident, the insurance company is liable to pay compensation to indemnify the insured. It was observed as follows:-

> *" 5. Counsel for the petitioner has relied upon a Division Bench judgment of this Court in the case of United India Insurance Company Limited v. Raj Rani, 1996(2) PLR 495 and a Single Bench judgment of this Court in the case of The New India Assurance Co. Ltd., through its Law Officer, Regional Office, Sector 17, Chandigarh v. Krishna widow of Ram Pal (deceased) and others, FAO No.17 of 2000, decided on 19.07.2010, to contend that if the driver is holding two licenses and the insurance company verified only one which was found forged and the other license produced is found to be properly issued and valid on the date of accident but the insurance company did not verify the same, the company is liable to pay the compensation."*

15. A Single Bench of this Court in **Reliance General Insurance Company Limited vs. Rajnesh and others, 2023(1) R.C.R. (Civil) 152,** has dealt with identical issue and following was observed:-

> *"9. The next contention of learned counsel for the appellant that respondent No.5 was not entitled to get driving licence by the Licensing Authority/District Transport Authority, Nagaland, since he has not been ordinary resident of the State, also deserves to be rejected. There is no dispute regarding provisions of Section 9 of the Act, which are to the effect that a person who is not disqualified to hold a driving licence, may apply to the Licensing Authority in the State in which he ordinarily resides or carries business for issue of a driving licence. So far as the facts of this case are concerned, no evidence was led by the appellant/Insurance company before the*

Tribunal that respondent No.1 was not ordinarily residing in Nagaland, at the time when licence, Ex. R-1, was issued to him, i.e., 24.5.2010. Mere reference to the address of respondent No.1, given in the memo of parties of the claim petition filed on 28.10.2013, could not, in any manner, establish that he was not ordinarily residing in Nagaland, at the time licence in question was issued to him in 2010."

CONCLUSION

16. In view of the facts and circumstances of the case, once the driving licence issued by the conerned RTO of Nagaland was found to be genuine on verification by respondent No.1-insurance company, the owner of the offending vehicle cannot be held liable to pay compensation to the victim. For all intents and purposes, Gurmukh Singh, driver of the offending vehicle, was holding a valid driving licence, duly issued by the concerned RTO in Nagaland, on the date of accident and the appellant had taken a reasonable care in hiring him.

17. Accordingly, this appeal is allowed and the impugned award is modified to the extent that compensation amount of Rs. 5,95,000/- along with interest at the rate of 7.5% p.a. (in view of the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation, 2009(6) SCC 121 and National Insurance Company vs. Pranay Sethi, (2017) 16 SCC 680)** from the date of filing of the claim petition till the date of actual payment, is liable to be paid by the respondent No.1-insurance company. The respondent No.1-insurance company is directed to reimburse the amount, if any, paid by the appellant. In case the compensation as awarded by the learned Tribunal has not been paid to the victim, respondent No.1-insurance company is directed to pay the same within a period of two months from the date of

passing of this order along with interest at the rate of 7.5 % p.a.

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

19. Registry is directed to send a copy of this order to learned Motor Accident Claims Tribunal, Karnal/Executing Court for compliance of the same.

(HARPREET SINGH BRAR)
JUDGE

12.05.2023
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Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No