

[232] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 02.05.2023

1. FAO-3642-2017 (O&M)

National Insurance Co. Ltd. ...Appellant

Versus

Kavita Devi &Ors.Respondents

2. FAO-3651-2017 (O&M)

National Insurance Co. Ltd. ...Appellant

Versus

Kanwar Singh &Ors.Respondents

3. FAO-3171-2018 (O&M)

Kavita Devi and Ors. ...Appellants

Versus

Sh. Waziru Jhama @ Vashi Jhama&Ors.Respondents

4. FAO-5195-2018 (O&M)

Kanwar Singh ...Appellant

Versus

Sh. WaziruJhama @ Vashi Jhama&Ors.Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ram Avtar, Advocate for the appellant in FAO No.3642 of 2017 and FAO No.3651 of 2017 and respondent No.3 in FAO Nos.3171 & 5195 of 2018.

None for the appellants/claimants in FAO Nos.3171 & 5195 of 2018 and respondent Nos.1 to5 &7 in FAO No.3642 of 2017 and respondent Nos.1& 3 in FAO No.3651 of 2017.

Service of respondent No.6 in FAO No.3642 of 2017, respondent No.2 in FAO No.3651 of 2017, respondent No.1 in FAO Nos.3171 and 5195 of 2018 dispensed with vide order dated 01.11.2019.

B.S. Walia, J. (Oral)

[1] This order shall decide FAO Nos.3642 and 3651 of 2017 and FAO Nos.3171 & 5195 of 2018.

[2] FAO Nos.3642 and 3651 of 2017 have been filed by the Insurance Company challenging restriction of recovery rights only to the extent of 50% after paying the entire compensation awarded to the claimants, despite the Tribunal having held there to be a breach of the terms and conditions of the Insurance Policy on account of failure of the owner and driver to produce the driving licence to enable the Insurance Company to verify the genuineness of the same, while FAO Nos.3171 and 5195 of 2018 have been filed by the claimants for modification of award and enhancement of compensation awarded.

[3] FAO Nos.3171 & 5195 are of the year 2018 and despite note in the cause list that bail applications, FAOs, CRs and RSAs shown in the ordinary list immediately after the list of urgent cases would be taken up for hearing in said seriatim, none is present on behalf of the claimants/appellants in said appeals, nor is anyone present on behalf of respondent Nos.1 to 5 and 7 in FAO No.3642 of 2017 and respondent Nos.1 & 3 in FAO No.3651 of 2017 both filed by the Insurance Company, despite service while service of respondent No.6 in FAO No.3642 of 2017 and respondent No.2 in FAO No.3651 of 2017, was dispensed with vide order dated 01.11.2019.

[4] Despite the cases have been called out twice, none has put in appearance on behalf of the appellants/claimants nor has any request for pass-over or adjournment been made in FAO Nos.3171 and 5195 of 2018.

Accordingly, FAO Nos.3171 and 5195 of 2018 are dismissed for non-

prosecution. Respondent Nos.1 to 5 and 7 in FAO No.3642 of 2017 and respondent Nos.1 & 3 in FAO No.3651 of 2017 are proceeded ex parte. Service of the driver (respondent No.6 in FAO No.3642 of 2017 and respondent No.2 in FAO No.3651 of 2017) of the offending vehicle was dispensed vide order dated 01.11.2019.

[5] Short point for adjudication in the appeals (i.e. FAO Nos.3642 and 3651 of 2017) filed by the Insurance Company is whether the award restricting the right of the Insurance Company to recover the compensation paid from the owner after paying the same to the claimants to 50 % of the awarded amount, despite the learned Tribunal having held that driving licence had not been produced by the owner and driver in view of the owner and driver having been proceeded ex parte, resulting in the Insurance Company not being in a position to verify the driving licence and the same amounting to a breach of the conditions of Policy, is legally sustainable.

[6] Learned Counsel contends that restriction of the right of the Insurance Company to recover compensation paid to 50 % of the total amount paid is legally unsustainable as once there was breach of conditions of the Insurance Policy then while ordering payment of compensation to the claimants, the Insurance Company was to be given the right to recover the amount paid by it in pursuance of the award from the owner in entirety and not partially.

[7] A perusal of the award dated 01.04.2017 reveals that the learned Tribunal in paragraph No.17 held that the owner and driver of the offending vehicle had neither appeared nor produced driving licence and registration certificate before the Tribunal and although the claimants'

collecting it from the State case and the same revealed that as per the registration certificate the offending vehicle was fit to ply on public road, besides was insured with the Insurance Company but the driving licence was not brought on record by the owner and driver to rebut the plea of the Insurance Company, therefore, it was presumed that the driver was not holding a valid driving licence in compliance of the terms and conditions of the Insurance Policy Ex.R9 and due to non-production of the driving licence, adverse inference was drawn against the owner and driver because the Insurance Company could not verify the genuineness of the driving licence and the position being as noted above, it could be safely said that the owner had breached the terms and conditions of the Insurance Policy due to non-production of the driving licence before the Tribunal. However, while holding the owner, driver and Insurance Company jointly and severally liable to pay amount of compensation to all the claimants, the Insurance Company was directed to indemnify the insured by making payment to the claimants and then recover only 50% of the amount in respect thereto from the owner and driver on account of non-production of the driving licence.

[8] I have considered the submissions of learned counsel.

[9] Admittedly, the owner and driver were ex parte before the learned Tribunal and the driving licence was not produced on the record. Once that be so, the same would amount to violation of the terms and conditions of the Insurance Policy Ex.R/9. A perusal of the Insurance Policy Ex. R/9 reveals the terms and conditions of the policy as contained in the clause of "limitation as to use". Relevant extract of the same is as under:-

“Limitation as to use:

xxx xxx xxx

Drivers Clause: Any person including the insured provided that the person driving holds an effective and valid driving license to drive the category of vehicle insured hereunder, at the time of accident and is not disqualified from holding or obtaining such a license. Provided also that a person holding an effective and valid learner’s licence to drive the category of vehicle insured hereunder may also drive the vehicle when not used for transport of passengers at the time of accident and that the person satisfies the requirements of Rule 3 of the Motor Vehicles Rules, 1989.”

[10] Since in the instant case, the driving licence of the offending vehicle was not produced on record either by the driver or the owner, the Insurance Company could not verify the genuineness of the same, therefore, there is a breach of the terms and conditions of the Insurance Policy.

[11] Accordingly, award by the Tribunal to the extent it orders payment of compensation to the claimants by the Insurance Company is upheld but the award to the extent it restricts the right of the Insurance Company to recover the compensation paid to the claimants from the driver and owner of the offending vehicle on account of non-production of driving licence to the extent of 50 % only is modified by holding the appellant/Insurance Company entitled to recover the full amount of compensation paid by it to the claimants from the owner and driver of the offending vehicle in view of breach of the terms and conditions as referred to above.

[12] In the light of the position noted above, FAO Nos.3642 and 3651 of 2017 filed by the Insurance Company are allowed in the aforementioned terms while FAO Nos.3171 & 5195 of 2018 filed by the claimants are dismissed for non-prosecution.

(B.S. Walia)
Judge

02.05.2023
'Amit'

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