IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7090-2018 (O&M)
Date of pronouncement: 22.02.2023

The New India Assurance Company Ltd., Shahabad

...Appellant

Versus

Dharampal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Pradeep Kumar, Advocate for the appellant.

Mr. Krishan Singh, Advocate for respondent No.3.

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H.S. MADAAN, J.

Briefly stated facts of the case are that petitioner/claimant Dharampal, had brought a claim petition under Sections 166 of the Motor Vehicles Act, 1988 (for short ‘the Act’) against respondents Vikram-driver, Malook Singh-owner and New India Assurance Company Ltd., Shahabad insurer of motorcycle bearing registration No.HR-78-0698 (for brevity ‘offending vehicle’), claiming compensation, alleging that on 06.11.2014 while he had boarded a three wheeler to return from Ambala to his village Kalyana and at about 8.30 pm, after alighting from the three wheeler, he tried to cross the road on foot, in the meanwhile, the offending vehicle being driven by respondent No.1 Vikram in a rash and negligent manner came from Shahabad side hit against him, resultantly, he fell down and received multiple serious and grievous injuries on his body. He was hospitalized and got treatment from various medical institutes. The matter had been reported to the police also.

2. Notice of the claim petition was given to the respondents. All the three respondents appeared and contested the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. On conclusion of the trial, the Motor Accidents Claims Tribunal, Kurukshetra (for short 'the Tribunal') vide award dated 13.07.2018, allowed the claim petition and awarded compensation of Rs.1,33,735/- with interest and costs to the claimant payable by all the three respondents jointly and severally.

3. Feeling aggrieved by such award passed by the Tribunal, the insurance company has filed the present appeal, notice of which was given to respondent No.3-owner of the offending vehicle, who has put in appearance through counsel to offer a contest.

4. I have heard learned counsel for the parties besides going through the record.

5. The first and foremost argument advanced by learned counsel for the appellant had been that respondent No.1 was not having a legal and valid driving license at the time of accident which amounted to violation of terms & conditions of the insurance policy, therefore, the insurance company should have been absolved of liability to pay compensation to the petitioner/claimant or at least, recovery rights should have been granted to the insurance company by the tribunal.

However, learned counsel for respondent No.3 has vehemently contested these contentions, stating that the onus was heavy upon the insurance company to show that respondent No.1 was not possessing any legal and valid driving license at the time of accident, which it had failed to discharge and now the appellant-insurance company wants the Court to reach this conclusion on the basis of conjectures and surmises. According to learned counsel representing respondent No.3, there had not been any violation of terms & conditions of insurance policy and the insurance company was rightly held liable to pay compensation to the petitioner/claimant without granting any recovery rights to it.

6. After hearing the rival contentions, I find that there is little merit in the submissions made by learned counsel for the appellant-insurance company. The relevant part of the impugned award dealing with this aspect is para No.30 which for ready reference is being reproduced as under:-

> "*The burden to prove this issue was on respondent No.3-insurance company. Respondents No.1 and 2 have produced the copy of driving licence of respondent No.1 as Ex.R7 issued by the District Transport Officer, Tuensang (Nagaland) valid from 4.11.2016 to 16.4.2036.*
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> *It is argued by learned counsel for respondent No.3 that respondent No.3 has got verified the driving licence of respondent No.1 Ex.R7 from the concerned authority through RW1 Gulzar Singh, Investigator and the same is found to be fake. It is further argued that since respondent No.1 was not having a valid driving licence at the time of accident, therefore, respondent No.2 has violated the terms and conditions of insurance policy Ex R6/R9 and thus, no liability can be fastened upon respondent No.3. Learned counsel for respondent No.3 has relied upon judgments in* ***Maho Ram and***

others Versus Jailla Devi and another. 2016 (2) PL.R. 63 (P&H) and Munshi Ram and another Versus Balkar Singh and others, 2016 (2) PLR. 526(P&H).

On the other hand, learned counsel for respondents No.1 & 2 has argued that respondent No.1 was having a valid and effective driving licence and the offending vehicle was insured with respondent No.3 at the time of accident, so, liability should be fastened upon respondent No.3 being insurer of the offending vehicle.

The perusal of driving licence of respondent No.1 Ex.R7 shows that the same has been issued by District Transport Officer, Tuensang (Nagaland). Respondent No.3 has examined RWI Gulzar Singh, Investigator, who has adduced his evidence by way of affidavit Ex.RWI/A. He has stated that he has moved an application for obtaining information regarding the genuineness of driving licence No. 27213/NTV/T/2014 in the name of Vikram son of Ramesh Kumar, resident of Village Chudiala, District Ambala under The Right To Information Act, 2005 was sent to Public Information Officer-Cum- District Transport Officer, Tuensang (Nagaland) on dated 7.8.2015 and then, Public Information Officer sent the information on 20.8.2015 to him regarding the genuineness of the driving licence and the report sent by DTO Tuensang (Nagaland) is reproduced below:

> *"With reference to your RTI letter, dated 7.8.2015, I have the honor to inform you that for the Driving Licence No.27213/NTV/T/2014, in the name of Vikram, no record is found/available at the undersigned officer".*

So, the driving licence is fake one as the same has not been issued by the office of DTO, Tuensang (Nagaland). He has also tendered in evidence RTI application as Mark-A, receipt as Mark-B, driving licence of Vikram as Mark-C, report of RTI as Ex.RI and the verification of driving licence as Ex.R2. Respondent No.3 has also tendered letter No.5216 *dated 4.8.2017 Ex R3, affidavit of D.TO. Tuensang, Nagaland Ex.R4 and envelope Ex.R5.*

*In the RTI Information Ex.R2, it has been specifically mentioned that the Driving Licence No.27213/NTV/T/2014 in the name of Vikram, no record is found/available at the office of District Transport Officer, Tuensang (Nagaland). From the RTI Information Ex.R2, no inference or presumption can be drawn that the driving licence of respondent No.1 was fake. The report does not state categorically that driving licence No.27213/NTV/T/2014 of Vikram, respondent No.1, was not issued by their office. Ex.R2 is merely information of non-availability of record and is insufficient to establish that the said driving licence was fake. As far as letter Ex.R3 and affidavit Ex.R4 of Shri Tsuknungmeren, District Transport Officer, Tuensang is concerned, wherein, he has stated that driving licence No.27213/NTV/T/2014 was not issued by their office as per office record, the same cannot be taken into consideration as these documents are not per se admissible documents. It is a settled principle of law that mere marking of the exhibit does not dispense with the proof of the document and the Hon'ble Supreme Court in case titled "**Sait Tarajee, Khimchand Vs. Yelamarti Satyam AIR 1971 SC 1865** had considered the said question and held that mere marking of an exhibit does not dispense with the proof of a document, Further, the Hon'ble Punjab and Haryana High Court in case titled as **"New India Assurance Co. Ltd. Versus Sunita Rani and others 2014 A.C.J. 1964** has held that*

> *"4A document, even if received by post. cannot be presumed to have been received from the Licensing Authority and cannot be believed to be a genuine document. The requirement of proving the said document was still there. I cannot agree with the decision in Jagmohan Singh's case, Civil Revision No.5768 of 2001: decided on 31.1.2002 (P&H), in this regard. The insurance company*

> *could not be absolved of its liability to prove this report Exh.R2 and merely putting of exhibit on the same, would not prove it."*
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> *In view of the above discussion, the contention of learned counsel for respondent No.3 is not tenable. Respondent No.3 has not produced any other evidence as to what other terms and conditions of the insurance policy Ex.R6/Ex.R9 have been violated by respondents No.1 & 2. As such, this issue is decided against the respondent No.3."*

7. A perusal of the impugned award goes to show that the tribunal had come to the conclusion that the insurance company had failed to show that the driving license of respondent No.1 Ex.R7 issued by the District Transport Officer, Tuensang Nagaland valid from 04.11.2016 to 16.04.2036 was not genuine but a fake one. With regard to the investigation report submitted by RW1 Gulzar Singh, Investigator engaged by the insurance company arrived at a conclusion that such driving license was a fake one. His report and deposition was not found to be reliable to draw such conclusion. With regard to the affidavit of DTO, Tuensang, Nagaland Ex.R4 and information supplied on moving of RTI application, those cannot be interpreted to mean that the license claimed by respondent No.1 was a fake document. The tribunal has rightly reached an inference that as per RTI information Ex.R2, no record was found to be available in the office of DTO, Tuensang, Nagaland but then it can certainly be not taken to mean that driving license in question was fake more particularly when it had not been successfully reported that the driving license in question had not been issued by that office.

8. Learned counsel for appellant submitted that affidavit of DTO, Tuensang, Nagaland and other official documents should have been taken into consideration by the tribunal since they are per se admissible being part of the public record. However, I am not convinced by such contention. The documents need to be proved in accordance with law and no such presumption is attached to official communication or affidavits. As per law, a person swearing an affidavit can be tested by way of cross-examination and only then the affidavit is taken to be admissible in evidence. Thus, the affidavit of DTO, Tuensang, Nagaland and other official documents cannot be relied upon in the absence of being proved in accordance with law so as to draw an inference that driving license in the name of respondent No.1 Vikram Ex.R7 is not a genuine document.

9. Learned counsel for the appellant-insurance company had referred to judgment **Munshi Ram & Anr. Vs. Balkar Singh & Ors. 2016(2) PLR 526**, by a Single Judge of this Court wherein it was observed that in a claim petition where recovery rights had been granted to the insurance company on account of driver of the vehicle involved in the accident not having a valid driving license, however, a response had been received through RTI of public officer it was taken to be public document observing that no further corroboration in the manner as contemplated under Section 77 of the Evidence Act was required and document must be taken to be true and what its recital state. The certified copy of the driving license issued also showed that the license had been renewed by DTO Office at Mansa on 26.08.2008. Thus it was taken that the driver had a valid driving license at the relevant time. This judgment is not helpful to the case of appellant in any manner due to different facts and circumstances.

Under the circumstances, the documents placed on record by the appellant cannot be accepted and relied upon to arrive at a conclusion that respondent No.1 was not having a legal and valid driving license at the time of accident.

10. In the next judgment referred to by learned counsel for the appellant **National Insurance Co. Ltd. Vs. Geeta Bhat, 2008 ACJ 1498**, wherein the insurance company of truck sought to avoid its liability on the ground that driving license possessed by driver of truck was fake. The official of the concerned Licensing Authority was summoned but no one turned up, then insurance company produced report of its own investigator that no license had been issued in the name of driver. Although, the tribunal had found that insurance company failed to lead evidence in support of its assertion and held it liable. However, on an appeal filed by the insurance company to the High Court it was dismissed. The Apex Court had assumed that license of truck driver was fake and the insurance company was held liable to make the payment to third party claimants with liberty to recovery the amount from owner and driver of the vehicle in appropriate proceedings. Again this judgment does not help the appellant since here there is nothing to show that the appellant/insurance company had made any effort to summon any official from the office of DTO, Tuensang Nagaland or that no such official had turned up. Furthermore, as per report by the office of DTO, Tuensang, Nagaland, no record regarding issuance of driving license was available. However, no report had been given that such license had not been issued from that office. Furthermore, the insurance company had not got any Local Commissioner appointed to record statement of the concerned official. Therefore, now it cannot wake up the issue again and state that respondent No.1 was not having a valid driving license at the time of mishap or that it amounts to violation of terms & conditions or for said reason, recovery rights should be granted to it. Therefore, this plea by learned counsel for the appellant is rejected.

11. In a judgment **M/s The New India Assurance Company Ltd., Ludhiana Vs. Sunita Rani & Ors., 2013(4) PLR 333**, a single Bench of this Court while dealing with an appeal against the award granting compensation to the claimant when the appeal had been filed by the insurance company seeking recovery rights against owner and driver of the offending vehicle for the reason that report of the licensing authority received proved that the driving license was not valid. Such plea was not accepted holding that it is not evident as to by what mode that report had come and in the absence of anyone to prove that report was made by Licensing Authority after consulting record of the authority it could not be held admissible in evidence and the insurance company could not be absolved of its liability to prove report Ex.R2 and merely putting of exhibit on the same would not prove it.

12. In authority referred to by learned counsel for the appellant ***Sait Tarajee, Khimchand & Ors. Vs. Yelamarti Satyam & Ors., 1971 AIR (SC) 1865*** , the Apex Court had observed that mere marking of a document as an exhibit does not dispense with its proof.

13. The second plea was with regard to grant of interest @ 12% p.a., which according to learned counsel for the appellant could not be granted being on higher side. However, a perusal of the award goes to show that the tribunal had granted compensation with interest @ 7.5% p.a., from the date of filing of claim petition observing that in case the amount was not paid within 30 days of the passing of the award, then respondent No.3 would be liable to pay interest @ 12% p.a., for the period delayed. That direction seems to have been given so that the insurance company deposits the amount promptly and it should not be taken to be penal in nature because the interest at the enhanced rate is meant to be paid for delayed period only, therefore, this grouse of insurance company also is without merit.

14. No other argument was raised.

15. I do not see any reason to interfere with the impugned award, rather the appeal is found to be without merit and is dismissed accordingly.

22.02.2023 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No