2024:PHHC:007470

215-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5641-2012 (O&M)
Date of decision : 19.01.2024

Monga Filling Station Chautala ... Appellant(s)

Versus

Mahavir Singh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.S. Jammu, Advocate and
Mr. Naveen Sihag, Advocate for the appellant.

Mr. Dheeraj Narula, Advocate for respondent Nos.1 and 2.

Mr. D.K. Dorga, Advocate for respondent No.3.

Mr. Vipul Sharma, Advocate as *amicus curiae.*

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant (owner of the vehicle) aggrieved by the award dated 12.04.2012 passed by the Motor Accident Claims Tribunal, Sirsa whereby the recovery rights have been granted to respondent No.3-Insurance Company.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. Learned counsel for the appellant (owner of the vehicle) would contend that in the present case the Tribunal has framed a specific issue i.e. issue No.3 *"Whether there is any violation of the terms and conditions of the insurance policy in question? If so, its effect? OPR3".* The learned counsel

would further contend that the onus of the said issue was cast on the Insurance Company (respondent No.3 herein). The learned counsel would further contend that in the present case not an iota of evidence was led by respondent No.3-Insurance Company to show that the driving licence was not valid.

4. *Per contra,* the learned counsel for respondent No.3-Insurance Company has relied upon the judgment of the Hon'ble Supreme Court in the case of **United India Insurance Company Limited Vs. Sunil & Ors. [2023 (4) Law Herald (P&H) 2909]** wherein it has been held that a special endorsement would be necessary for driving a hazardous goods vehicle and in case the said endorsement was not there, the Insurance Company could not be held liable.

5. Mr. Vipul Sharma, Advocate was requested to assist this Court as *amicus curiae.* Learned *amicus curiae* has handed over a compilation of the judgments of the Hon'ble Supreme Court as well as of this Court on the issue. Divergent views were taken by the different Benches of this Court with regard to whether an endorsement is required or not. Hon'ble Supreme Court in the case of **The New India Assurance Company Ltd. Vs. M/s Chadha Brothers & Ors. [Civil Appeal No.1290 of 2023 decided on 20.02.2023]** had dismissed the appeal preferred by the Insurance Company assailing the judgment passed by the High Court wherein the High Court had held that since no question was put to the owner of the vehicle in cross-examination regarding the endorsement that he was authorized to ply the

vehicle carrying hazardous goods. Learned counsel has further referred to the judgment of this Court in the case of **National Insurance Co. Ltd. Vs. Harbans Kaur & Ors. [FAO No.1210 of 2014 decided on 26.03.2018]** wherein it has been held that even in case there is no endorsement on account of the vehicle being hazardous goods vehicle and the accident not being on account of the said fact, the Insurance Company could not be absolved of their responsibility. Bunch of cases were decided on the same issue which were challenged before the Hon'ble Supreme Court and vide order dated 03.12.2019 passed in SLP (C) Nos.28514-28518 of 2019 the said Special Leave Petitions were dismissed by the Hon'ble Supreme Court.

6. Heard. With the able assistance of the counsel and the *amicus curiae,* I have gone through the record of the Tribunal.

7. In the present case the Insurance Company (respondent No.3) had not led any oral evidence and the documents i.e. driving licence, verification report, registration certificate and insurance policy were only tendered in evidence. None appeared on behalf of the Insurance Company. The onus to prove as to whether there is any violation of the terms and conditions of the insurance policy in question was on respondent No.3-Insurance Company. In the absence of any evidence, it cannot be held that the Insurance Company had discharged the onus of issue No.3 which was cast upon it. Further still, there is nothing on the record which could even remotely point out to the fact that the accident occurred because of the fact that the endorsement on the license was missing or that the driver was

incompetent to drive the vehicle in the absence of the endorsement. A coordinate bench of this Court vide order dated 26.03.2018 passed in **FAO-1210-2014** has held as under :

> *"The question that now arises would be whether such a breach of not having obtained necessary endorsement as required under sub-Rule (3) of Rule 9 of the Rules, is so fundamental as to have contributed to the cause of accident. The answer, at the outset, appears to be in the negative. It is nobody's case that the accident took place because of dangerous or hazardous substance being carried in the vehicle. On the contrary, there is no challenge to findings of the Tribunal that the accident occurred due to negligence in driving the offending tanker. In the given scenario, carrying or non-carrying of dangerous or hazardous substance has no nexus with cause of accident that occurred due to rash and negligent driving of the vehicle by its driver. In this view of the matter, it can safely be held that the breach complained of by the insurer is not so fundamental as is found to have contributed to the cause of accident.*
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> *This apart, perusal of Rule 9 of the Rules would make it evident that before a driver can file an application for obtaining necessary endorsement as required under sub-rule (3) of Rule 9 of the Rules, he is to undergo some training for a period of two to three days but the same does not deal with the professional skill of driving. With regard to professional skill of driving, it has already been clarified by the licensing authority at the time of granting licence to the driver authorizing him to drive a*

transport vehicle. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Apex Court in Swaran Singh's case (supra) coupled with the discussion made hereinbefore, I am inclined to agree with what has been held by the Division Bench of the Madhya Pradesh High Court in Baghelkhand Filling Station and another's case (supra) and Gujarat High Court in Amarshi Punchanbai Patel and others' case (supra). This Court in Rajesh Singh's case (supra) has neither adverted to judgment of Hon'ble the Supreme Court in Swaran Singh's case (supra) nor judgments by the High Courts of Madhya Pradesh and Gujarat. In this view of the matter, insurance company can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle"

8. In view of the above, the findings of the Tribunal absolving the Insurance Company (respondent No.3 herein) of its liability cannot be sustained and the same are accordingly set aside. The present appeal is partly allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

19.01.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO