2025:PHHC:089455

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-8095-2016 (O&M)
Date of decision: 21.07.2025

Vijay Kumar ...Appellant

Versus

Cholamandalam MS General Insurance Co. Ltd and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vikram Singh, Advocate for the appellant.

Mr. Punit Jain, Advocate
for respondent No.1-Insurance Company.
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SUDEEPTI SHARMA, J. (ORAL)

1. The case is listed before this Court for referral to the “Special Mediation Drive-Mediation ‘For the Nation’ List”.

2. Learned counsel for the appellant contends that the present appeal involves adjudication on the issue of liability to pay compensation, which raises substantial questions of law and fact. He, therefore, contends that the matter is not amenable for mediation at this stage.

3. Considering the nature of the controversy and the legal issues arising therein, this Court is of the view that the appeal deserves to be heard and decided on merits. Accordingly with the consent of both for the parties, the matter is taken up for final hearing today itself.

CM-8003-CII-2017

1. The present application has been filed under Section 151 of the Code of Civil Procedure, 1908 seeking permission to place on record a copy of the Driving Licence dated 11.11.1991 (Annexure A-2) of applicant-

appellant and for dispensing with the requirement of filing certified/typed copy thereof.

2. At the outset, it is observed that this application, in substance, seeks to bring on record an additional evidence in the shape of driving licence of applicant-appellant at the appellate stage. It is not in dispute that the accident in question occurred in the year 2013 and the claim petition filed by the claimant/respondent No.2 stood adjudicated by the learned Motor Accident Claims Tribunal in the year 2016. The present miscellaneous application cannot be allowed at this stage.

3. A perusal of the record reveals that the appellant was granted sufficient opportunities before the learned Tribunal to produce the said driving licence in support of his defence. Despite such latitude afforded by the Tribunal, the appellant failed to place on record the licence at the relevant time.

4. This Court is mindful of the settled principles that additional evidence at the appellate stage is not to be permitted as a matter of course. It can only be allowed in exceptional circumstances, where the applicant satisfies the Court that the evidence sought to be produced was not within his knowledge or could not be produced despite due diligence before the Tribunal. No such explanation, much less a satisfactory one, has been offered in the present application.

5. Moreover, allowing such belated production of licence would prejudice the rights of the insurance company, which has a right to contest the authenticity of the driving licence, including raising a defence under Section 149(2) of the Motor Vehicles Act, 1988. Permitting this evidence at

this stage, would effectively circumvent the evidentiary safeguards of the trial.

6. In view of the foregoing discussion, this Court finds no justifiable ground to exercise its discretion under Section 151 CPC to allow the present application. Accordingly, the present application is dismissed.

Main case

1. The present appeal has been filed by the appellant (driver-cum-registered owner) against the award dated 03.08.2016 passed in the claim petition under Section 166 of the Motor Vehicles Act 1988 wherein, the Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') had allowed the claim petition filed by the claimants and held the Insurance Company liable to pay the compensation, at first instance, and recovery rights were granted to the Insurance Company to recover the said amount from the appellant.

2. Learned counsel for the appellant submits that the appellant was holding an effective driving licence at the time of accident. It is further argued that the Insurance Company led no evidence to establish that there was breach in the conditions of the insurance policy. Therefore, he prays that the present appeal be allowed and recovery rights granted to the insurance company be set aside.

3. Per contra, learned counsel for the respondent/Insurance Company argues on the lines of the award and prays for dismissal of the appeal.

4. I have heard learned counsel for the parties and perused the whole record of the case with their able assistancce

5. The relevant portion of the award is reproduced as under:-

Now the question arises as to who would pay the amount of compensation. Admittedly, offending vehicle i.e. Canter No.HR-45A-4140 was being driven by respondent No.1, who was also owner of the same and the aforesaid offending canter No.HR-45A-4140 was insured with respondent No.2-Cholamandalam MS General Insurance Company Ltd. at the time of alleged accident. An objection was taken by respondent No.2 that the vehicle in question was being plied in contravention of the terms and conditions of the insurance policy and respondent No.1 was not holding a valid and effective driving licence on the alleged date of accident. Although, respondent No.1 has failed to produce on record his driving licence, yet respondent No.2-Insurance Company has also failed to bring on record any evidence showing that the respondent No.1 was not holding a valid driving licence on the alleged date of the accident. Whereas, the claimants during the course of evidence, have placed on record report under Section 173 Cr.P.C. Ex.P7 and a minute perusal of the same unveil that respondent No.1-Vijay Kumar was charge-sheeted under Sections 279/337/338/304-A of the Indian Penal Code and during investigation of the aforesaid criminal case, it is nowhere proved that the driver i.e. respondent No.1 was not having a valid and effective driving licence. However, since the onus to prove that the respondent No.1 was holding a valid and effective driving *licence was upon the respondents and respondent No.1 failed to produce on record his driving licence during the course of proceedings of this case, it is held that respondent No.1-Vijay Kumar, driver of the offending vehicle in question, was not holding a valid and effective driving licence on the date of accident and thus there was a breach of terms and conditions of the insurance policy. In the light of above discussion, this tribunal is of the considered view that respondent No.2-Insurance Company has succeeded to prove issue No.3. Accordingly, issue No. 2 is partly decided in favour of the claimants whereas issue No.3 against respondent No.1. Under issue. No.3, respondent No.2 is absolved from its liability to pay the compensation and respondent No.1 i.e. driver and owner of the offending vehicle, is held solely liable to pay the same to the claimants. However, in view of the proposition of law laid down in* ***Kamala Mangalal Vayani & Ors. Vs. M/S United India Insurance Co. Ltd. & Ors., 2010(3) Apex Court Judgments (Supreme Court) 533****, the amount of compensation along with interest shall first pay by the respondent No.2-Insurance Company and thereafter it shall have a right to recover the said amount from the insured as per law.*

6. A perusal of the record reveals that the appellant/owner-cum-driver of the offending vehicle has challenged the findings of the learned Tribunal on the ground that Ld. Tribunal erroneously held the appellant to be without a valid and effective driving licence and consequently granted

recovery rights to respondent No.2, the Insurance Company. A careful examination of the impugned award indicates that the learned Tribunal did not return well-reasoned or consistent findings regarding this issue.

7. While at one point the Ld. Tribunal correctly observed that the burden lay on the Insurance Company to prove any breach of conditions of the policy, including absence of a valid licence, it simultaneously contradicted itself by holding that respondent No.1 failed to produce his driving licence and therefore must be deemed to have not possessed one. This conclusion was reached without any conclusive evidence from the Insurance Company to substantiate that the driver was in fact, not holding a valid and effective driving licence at the time of the accident.

8. It is also pertinent to note that the claimants placed on record the report under Section 173 Cr.P.C. (Ex.P7), which shows that while charges were framed under Sections 279/337/338/304-A of the IPC against the appellant, there was no report during the investigation that the driver lacked a valid driving licence. Despite this, the learned Tribunal concluded solely on the failure of the appellant to produce his driving licence.

9. In the light of these inconsistencies and lack of cogent reasoning and convincing evidence, this Court is not satisfied with the findings recorded by the learned Tribunal regarding the issue of liability to pay compensation by the appellant.

10. Consequently, considering the peculiar facts and circumstances of the present case, the appeal is allowed and the matter is remanded to the learned Tribunal to re-examine and decide issue No.3 i.e. *"whether the respondent No.1 having valid and effective driving licence at the time of*

accident and the offending vehicle was being plied in violation of the terms and conditions of the policy, if so to what affect?", afresh, preferably within a period of **three months** on day to day basis from the date of receipt of copy of this judgment, after duly appreciating the entire evidence on record and by giving clear and reasoned findings in accordance with law after giving opportunity of hearing to both the parties.

11. The parties are directed to appear before the Tribunal on 08.08.2025.

12. Pending application(s), if any, stand disposed of.

21.07.2025 **(SUDEEPTI SHARMA)**
Yogesh **JUDGE**

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