IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202

FAO-4397-2014(O&M)
Date of decision: 07.04.2026

Sarabjit Singh

...Appellant(s)

Vs.

New India Assurance Company & Others

...Respondent(s)

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CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mayank Mathur, Advocate
for the appellant.

Ms. Alka Joshi, Advocate
for respondent No.1/Insurance Company.

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NIDHI GUPTA, J.

Present appeal has been filed by the owner of the offending vehicle laying challenge to the Award dated 23.09.2013 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter 'the learned Tribunal') in Civil Misc.No.85T dated 04.10.2011, whereby liability to pay the compensation amount of Rs.1,53,600/- has been affixed upon the appellant.

2. The present case has a somewhat chequered history. For better appreciation of the issue at hand, it would be helpful to peruse the facts in chronological order, as follows: -

29.04.1992: The claimants/respondents No.2 to 6 herein had filed Claim Petition No.29 dated 29.04.1992 under Section 166 of the Motor Vehicles

Act (hereinafter "the Act") before the MACT, Patiala seeking compensation on account of death of Harmesh Singh. The five claimants were the widow, two minor children and parents of deceased Harmesh Singh.

26.07.1994: Vide Award dated 26.07.1994, the MACT Patiala had allowed the said Claim Petition and awarded compensation of Rs.1,53,600/- to the claimants along with interest @ 12% per annum.

The learned Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the deceased Harmesh Singh had died due to the injuries suffered by him in a motor vehicular accident that took place on 08.03.1992 due to the rash and negligent driving of Truck bearing registration No.PB-11-C-1827 (hereinafter "the offending vehicle") being driven by respondent No.7 (now deceased), owned by the appellant and insured by respondent No.1. Accordingly, Claim Petition was allowed, compensation awarded and liability to pay the compensation amount was jointly and severally affixed upon the appellant, and respondent No.1/Insurance Company, and the now deceased respondent no. 7.

06.12.2010: Against the said Award dated 26.07.1994, the respondent No.1/Insurance Company had filed FAO-2271-1994. The said FAO was allowed by this Court vide order dated 06.12.2010, which reads as follows:-

> *"1. The only issue for consideration in the appeal is whether the driver had valid driving licence. By an order dated*

21.09.2010, I had directed the Insurance Company to take steps to summon the witness from the competent authority as regards the driving licence. I see from the records that notice has been issued but the status of service is not yet known.

2. I do not want to detain the case only for non-service of notice on the witness. The issue of driving licence will have a bearing only for settling an inter se controversy between the insurer and the insured. The award as regards the initial liability of the insurer and the quantum of compensation determined by the Tribunal are confirmed. The finding as regards the validity of the driving licence is set aside and the matter is remitted to the Tribunal at Patiala for fresh consideration on the issue regarding the validity of the driving licence. The parties shall be at liberty to adduce appropriate evidence in support of the respective contentions. The award is modified and remitted to the lower Court for disposal in accordance with law.

3. For appearance of parties before the Tribunal at Patiala on 12.01.2011."

23.09.2013: Upon remand of the matter, the learned Tribunal had re-considered the issue in respect of the liability to pay compensation and had now passed the impugned Award dated 23.09.2013, whereby respondent No.1/Insurance Company has been granted right to recover the compensation amount from the appellant.

3. Aggrieved thereof, present appeal has been preferred by the owner of the offending vehicle.

4. It is inter alia submitted by learned counsel for the appellant that liability to pay the compensation amount has been fixed upon the appellant on the ground that the Driving Licence of respondent No.7 was fake. Therefore, recovery rights have been given to the respondent No.1 against the appellant. It is submitted that, however, indirect as above, the learned Tribunal has ignored the evidence of the appellant. Appellant has categorically stated that he has checked the driving license produced by respondent no.7. Therefore, recovery rights could not have been granted.

5. It is submitted that the learned Tribunal in order to reach this finding has placed reliance on a report by DTO, Hyderabad pertaining to verification of the Driving Licence of the driver and also a report of Investigator of New India Assurance Company to similar effect. It has also relied upon the testimony of RW2-Pawan Kumar who had come from the office of DTO, Sangrur where the licence is purported to have been renewed. The witness has brought a register containing the entries of renewal from the period of 21.11.1989 to 31.12.1989 and has stated that there is no entry pertaining to renewal of Driving Licence of Shri Wazir Singh on 26.12.1989.

6. It is due to the above-mentioned testimony/ evidence that the learned Tribunal has foisted the burden of compensation on the appellant and has exonerated the Insurance Company. However, this approach of the learned Tribunal is completely perverse and against the settled law enunciated in a catena of judgements and most recently affirmed vide the

Hon'ble Supreme Court in the judgement titled as **P.R.T.C. Vs. National Insurance Company, reported in 2013(3) Apex Court Judgements-315.**

7. Ld. Counsel submits that in the present case the appellant has specifically deposed that while employing the said driver i.e. Shri Wazir Singh the appellant had seen the driving licence of Sh. Wazir Singh and the same appeared to be valid as the same was duly signed and sealed by Licensing Authority, Hyderabad. The appellant had also taken the driving test of Shri Wazir Singh as a truck driver before employing him. In fact, Wazir Singh had been in service of the appellant for more than one year before the said accident and his driving was completely satisfactory, efficient and without any accident whatsoever. Therefore, the appellant could not have been burdened with the compensation as he cannot have said to breached any terms and conditions of the Insurance Policy.

8. However, the said testimony of the appellant has been discarded/rejected on the ground that the appellant did not raise any such plea in his pleadings and nor had he made any statement to this effect earlier. Rather, this fact only finds mention in his statement after the case has been remanded by this Court and therefore, this plea appears to be an afterthought.

9. It is clarified that there is no question of the appellant taking this plea in his written statement as no averment pertaining to Driving Licence of Shri Wazir Singh finds mention in the claim petition filed by the

claimants. Rather, the plea of invalid Driving Licence only finds mention in the written statement of the Insurance Company and the appellant could not have filed a replication to the written statement of one of the co-respondents. Therefore, by no stretch of imagination could the appellant have put up this plea in his written statement.

10. It is accordingly prayed that the Award dated 26.07.1994 passed by MACT Patiala be set aside and Insurance Company be not granted recovery rights against the appellant.

11. Per contra, learned counsel appearing for the respondent No.1/Insurance Company opposes the submissions advanced on behalf of the appellant and submits that the appellant in his written statement has nowhere taken any plea with regard to Driving Licence of the respondent No.7. In fact, the appellant has denied the accident in question. As such, any subsequent evidence led by the appellant upon remand, cannot be taken into consideration as the same is an afterthought. In support, learned counsel for the respondent No.1 relies upon three-Judge Bench judgment of Hon'ble Supreme Court in **Pappu v. Vinod Kumar Lamba, (SC) : Law Finder Doc ID # 964715,** wherein in Para 11 it is held as follows: -

> *"11. The question is: whether the fact that the offending vehicle bearing No. DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the*

Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to *make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."*

It is accordingly prayed that the present appeal be dismissed.

12. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of the appellant.

13. The record reveals that after remand, the learned Tribunal had considered the matter afresh and given a chance to both the parties for leading evidence pertaining to the issue of Driving Licence as was directed by this Court in the order mentioned above. The learned Tribunal further framed a separate issue i.e. Issue No. 5-A to the effect that: "*Whether*

respondent No.2 i.e. the driver had no valid and genuine Driving Licence and if so, its effect? OPR (Insurance Company)"

14. After adducing the evidence on both sides, the learned Tribunal has held that the appellant would be liable to pay the compensation as the Driving Licence held by the driver of the vehicle is invalid, however, as the compensation has already been paid by the Insurance Company, therefore, the Insurance Company would have a right to recover the amount from the appellant.

15. The ld. Tribunal vide impugned Award dated 23.09.2013 has granted recovery rights to respondent No.1 for the following reasoning: -

> *"12… … …My learned predecessor accepted the said application and issued letter dated 31.10.2012 to the Licensing Authority, Hyderabad to send the verification report regarding the driving licence in question. In pursuance of the letter sent by the tribunal, the licencing authority Hyderabad has sent the report Ex. R4 to the tribunal. As per the said report no such driving licence was issued to respondent no.2 Wazir Singh."*

16. I am not in agreement with the aforesaid reasoning. In relying upon report (Ex.R4), the learned Tribunal has totally ignored the Affidavit (Ex.RW1/A) submitted by the appellant wherein he has categorically stated as follows: -

> *"1. That on 18.3.1992, I was owner of truck No.PB-11-C-1827. I had employed Sh.Wazir Singh son of Sh.Gurmukh Singh-*

respondent No.2 in the petition as driver for the said truck in the year 1991. At the time of employing Wazir Singh as driver for my truck, I had examined his driving license, photocopy of which is marked as ***Ex.R-2*** *in the main file. The license was duly signed and sealed by the Licensing Authority, Hyderabad. I had also taken the driving test of Wazir Singh before employing him as driver for the said truck. Wazir Singh drove the truck as an vigilant and able driver for more than 1 year. Since the driving license was properly sealed and signed by the competent authority, so I took the same to be legal, valid and genuine as a prudent person."*

17. Perusal of the impugned Award shows that the learned Tribunal has made no reference whatsoever to the aforesaid Affidavit of the appellant.

18. As far as the earlier statement of the appellant is concerned, it would be pertinent to mention that earlier also the following issue pertaining to this very fact of the Driving Licence was framed by the Tribunal:

"5. Whether respondent No.3 is not liable for reasons pleaded in the written statement? OPR"

19. It is, therefore, very clear that the burden for proving the fact that the Driving Licence of Sh.Wazir Singh was invalid, was on the Insurance Company. The Insurance Company produced no evidence in affirmative to discharge its burden/onus of the said issue. Therefore, the appellant felt no need to lead any rebuttal evidence pertaining to the Driving Licence of the

driver. There is merit in the contention of the appellant that as no averment was made in the claim petition regarding validity or invalidity of driving license of respondent no.7, there was no occasion for appellant to plead anything in this regard or even to lead any evidence in this regard. Consequentially, the evidence now led by the appellant cannot be said to be an afterthought.

20. Furthermore, in the facts and circumstances of the present case, reference may be made to judgment of Hon'ble Supreme Court in **Pepsu Road Transport Corporation v. National Insurance Company (SC) : Law Finder Doc ID # 477201; decided on 26.08.2013,** wherein it is held that:

> *"Accident caused by a driver who possessed fake driving licence - Insurance Company liable to pay compensation and not the owner of vehicle.*
>
> *A. Motor Vehicles Act, 1988, Section 166 - Motor Vehicles Act, 1988, Section 149(2)(a)(ii) - Driver of vehicle causing accident - The driver possessed fake driving licence - Insurance Company is liable to pay the compensation and not owner of vehicle.*
>
> *ON FACTS*
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> *Owner of Vehicle employing a driver - The owner satisfied that driver had valid driving licence - Competency of driver to drive the vehicle was also tested - The driver causing fatal accident after 7 years of employment - Insurance Company is liable to pay compensation - Held:- When an owner hires a driver he has to satisfy that driver had valid driving licence - Owner cannot go to extent of verifying the genuineness of the driving licence with the licensing authority.*

B. Motor Vehicles Act, 1988, Section 149(2)(a)(ii) - When an owner hires a driver he had to satisfy that driver had valid driving licence and had competency to drive - Owner is not expected to go to the extent of verifying the genuineness of the driving licence with the licensing authority - If such a driver causes accident, then Insurer and not the insured will be liable.

XXX XXX XXX

8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for *verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

21. Reference may also be made to judgment of Hon'ble Supreme Court in **"Rishi Pal Singh Vs. New India Assurance Co. Ltd. & Ors" Civil Appeal No.4919 of 2022 decided on 26.07.2022,** wherein it is held that:-

"10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver."

22. Thus, the aforesaid judgment relied upon by learned counsel for the respondent No.1/Insurance Company in **Pappu (supra)** is distinguishable on facts and law.

23. In view of the above discussion, present appeal stands **allowed;** and impugned Award dated 23.09.2013 passed by the learned Tribunal is

set aside qua the appellant to the extent recovery rights have been granted to the respondent No.1/Insurance Company against the appellant.

24. Pending application(s) if any also stand(s) disposed of.

07.04.2026 **(Nidhi Gupta)**
Sunena **Judge**

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