(2001) 03 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : FAO 1383 of 1998

Davinder Singh APPELLANT

Vs

Ajaib Singh RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166
Penal Code, 1860 (IPC) — Section 304

Citation : (2001) 2 RCR(Civil) 625

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.S. Bains, for the Appellant; Mr. S.K. Arora and Mr. D.P. Gupta, for the Respondent

Judgement

R.L. Anand, J.—By this judgment I dispose of 3 FAOsNos. 1383,1382 and 1381 of 1998 titled as pav-inder Singh v. Ajaib Singh and others, Davinder Singh v. Bhim Singh and others and Davinder Singh v. Gur-bachan Kaur and others respectively. In my opinion, all the 3 FAOs can be disposed of by one judgment, as these have arisen from the same accident which took lace on 10.10.1991 in which Rajjnder Singh Khullar as expired. The first claim petition was filed by his wife, two minor daughters, one son and parents. The second claim petition was filed by Ajaib Singh, driver of Maruti Van bearing registration No. PIM-4917 and the third claim petition was filed by Bhim Singh, owner of the said Maruti.

2. The brief facts of the case are that on the date of accident i.e. on 10.10.1991, Rajinder Singh Khullar-de-ceased was travelling in the Maruti Van bearing registration No. PIM-4917 at about 3 p.m. This vehicle was being driven by Ajaib Singh and when the vehicle reached near village Singhanwala towards Moga side, a tractor trolley was coming from the same side. Ajaib Singh tried to overtake the said tractor trolley and in the meanwhile, a bus bearing registration No. PAB-3078 belonging to Kotkapura being driven by Davinder Singh came from the opposite side. According to the claimants, Davinder Singh was driving the

bus at a very high speed and he could not control the bus due to which, the bus struck against the van and as a result of which, Rajindcr Singh Khullar-deceased received injuries and died at the spot. The accident was witnessed by I.akhwinder Singh son of Balkar Singh resident of Kot lse Khan and Swam Singh son of Kararn Singh of Kotkapura. They removed Ajaib Singh to Civil Hospital, Moga. It is alleged by the learned counsel for the appellant that he was 42 years of age at the time of accident and he was working as Assistant Sales Manager in the Company at Chandigarh and was dr wing Rs. 7500/- per month as salary. The offending vehicle No. PAR-3078 was insured with the United India Assurance Company and it was owned by Bhupinder Singh and post mortem on the dead body of Rajinder Singh Khullar was conducted and the case was also registered against Davinder Singh u/s 304A of the Indian Penal Code. If is alleged by Gurbachan Kaur, Shally, Shikha, Pramjit Singh, Parkash Kaur and Baldev Singh Khullar that they were depending upon the income of Rajinder Singh Khullar-deceased. With these broad allegations, the claimants have claimed compensation of Rs. 25,20,000/- along with interest @ 18% per annum from the date of accident till payment. The claim petition was filed against M/s Kot Kapura Bus Service through its owners Bhupinder Singh and Davinder Singh and United India Insurance Company Ltd.

3. Notices of the claim petitions were given to the respondents. Joint written statement was filed on behalf of respondents 1 and 2 whereas respondent No. 3 filed a separate written statement.

4. According to the driver of the bus, the accident took place due to the rash and negligent driving of Ajaib Singh, the driver of Maruti Van. He was not having a valid driving licence. Ajaib Singh tried to overtake a tractor trolley and he could not control his vehicle and dashed it against the bus. Respondent No. 3 inter alia pleaded that it is not responsible to pay any compensation as the driver of the bus Davinder Singh was not holding any valid licence. Moreover, the petitions are bad for non-joinder of the necessary parties.

5. The Tribunal framed the following issues:-

" 1. Whether the death of Rajinder Singh Khullar was caused on 10.10.1991 at about 3pm in the area of village Singh anwala by the wrongful act of Davinder Singh-respondent No. 2 rashly and negligently driving Bus No. PAB-3078 belonging to respondent No. 1 ?OPA

2. Whether the applicants are entitled to compensation ? OPA

3. Whether the application is maintainable ? OPP

4. To what amount as compensation are the applicants entitled and from whom ? OPP

5. Whether the application is bad for non-joinder ol the necessary parties ? OPR-2

6. Relief."

6. Parties led oral and documentary evidence. Issue No. 1 was decided in favour of the claimants. Issue No. 2 was also decided in favour of the claimants anc it was held that the claimants are entitled to compensation. Under issue No. 3, the claimants were awarded compensation of Rs. 4,91,600/-, Rs. 10,0007- to Ajaib Singh and Rs. 50.000/- to Bhim Singh, owner of the Van. Issue No. 4 was decided against the owner of the bus. Similarly, issue No. 5 was decided against respondents 1 to 3 and finally, the claim petitioners were allowed but the Tribunal ordered that the compensation shall be paid by the driver of the bus Davinder Singh. Not satisfied with the findings of the Tribunal, the present 3 appeals by Davinder Singh.

7. 1 have heard the learned counsel for the parties and with their assistance I have gone through the record of the case.

8. The real dispute in these 3 appeals is between the appellant Davinder Singh and the Insurance Company. The case of the appellant is that since he was holding a valid driving licence at the time of accident, therefore, the liability is joint and several. Admittedly, the bus was insured with respondent No. 3 at the time of accident, therefore, the Insurance Company is also liable to pay compensation and that the findings of the Tribunal on issue No. 5 are erroneous. Before I deal with the contentions raised by the learned counsel for the parties, it would be appropriate for me to re-produce para 15 of the award vide which issue No. 5 was disposed of against the appellant :-

"The learned counsel for respondent No. 3 has tendered in evidence the copy of the driving licence of Davinder Singh Exhibit Rl. Its exhibition has been admitted by Shri Rajinder Singh Romana, counsel for respondent Davinder Singh. The accident took place on 10.10.1991. The date of birth of Davinder Singh recorded in his driving licence is 10.7.1970. The date of issue of driving licence is mentioned as 3.11.1997. As already stated, the driving licence Exhibit Rl has been admitted by Rajinder Singh Romana, learned counsel for Davinder Singh driver and owner of the bus. From this, the only conclusion which can be drawn is that Davinder Singh respondent was not having the valid driving licence on the dayofaccidenti.e. 10.10.1991. In spite of the opportunity given no evidence has/ been adduced that Davinder Singh was holding any valid and effective driving licence on 10.10.1991 when the bus met with an accident. The respondent has placed on record the insurance policy Exhibit R2. As per clause I of the policy of insurance Exhibit R2, which is an exclusion clause the Insurance Company is not liable where the driver had no driving licence at the time of accident. According to this clause, the liability of the Insurance Company because if the person driving the bus holds an effective driving licence at the time of the accident and is not disqualified from holding any effective driving licence on the day of accident. The insurance policy Exhibit R2 contemplates that insurance company would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence. In the instant case, Davinder Singh driver was not holding any valid driving licence on the day of accident.

Therefore, the insurance company i.e. respondent No. 3 is not liable to pay any compensation. Reference in this regard can be made to New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, and the latest authority of our own Hon''ble High Court Ram Narain and another v. Samitra Devi and others, 1998 (1) SLJ 308. As Davinder Singh respondent was not holding a valid driving licence at the time of accident, therefore, there is no liability of the insurance company to meet the claim of the claimants. In the result, the claimants are entitled to claim compensation from respondents Nos. 1 and 2 only. This issue is decided accordingly in favour of the claimants and against respondents 1 and 2."

9. Learned counsel for the appellant vehemently submitted that the Tribunal committed error in holding that Davinder Singh was not holding a valid driving licence at the time of accident. In fact, the driving licence was issued in his favour by the competent registration authority, Faridkot, on 22.7.1991. It was valid upto 21.7.1994. Since the accident in this case had taken place on 10.10.1991, therefore, the driving licence of the appellant was valid. Davinder Singh - appellant was competent and eligible to drive the heavy vehicle. In support of his contention, learned counsel for the appellant relied upon a photostat copy of the driving licence and it was urged by the learned counsel for the appellant that Davinder Singh was challaned by the police and his original driving licence was taken into possession. Moreover, the motion Bench called the record of the criminal Court and it was found that Davinder Singh was having a valid driving licence at the time of accident and in these circumstances, the Tribunal fell into error by holding that compensation shall be paid to the claimants by Davinder Singh and not by the owner and the Insurance Company. On the contrary, the learned counsel for the respondents vehemently submitted that photostat copy of the driving licence relied upon by the learned counsel for the appellant was not a part of the record of the trial Court. The driver did not produce the original driving licence not it was a certified copy. He could have produced some original record because the onus was upon him. So much so, Davinder Singh supplied the particulars oi his driving licence to the Insurance Company. It could be easily verified whether Davinder Singh was holding a valid licence or not. At this juncture to hold that Davinder Singh was not holding a valid licence, would cause a serious prejudice to the case of the Insurance Company.

10. I do not subscribe to the arguments raised by the learned counsel for the Insurance Company. We all know that the proceedings before the Tribunal are summary proceedings. Strict principles of CPC and Evidence Act are not applicable Tribunal is free to exercise its original jurisdiction. The Tribunal should be satisfied whether the driver of the offending vehicle was holding a valid driving licence or not. Keeping in view that object, the motion Bench called the record of the criminal Court. Since Davinder Singh was prosecuted by the police, therefore, in all probability the police must have verified whether he was having a driving licence or not. Be that as it may, since the attested copy of the licence has come before me which prima facie shows that the driving licence was issued

on 22.7.1991 by the Licensing Authority and it was valid upto 21.7.1994 therefore, it has to be held that Davinder Singh was holding a valid licence at the time of accident, therefore, the finding of the Tribunal on issue No. 5 contained in para 15 are set aside.

11. It was then submitted on behalf of the Insurance company that since the findings of the Tribunal as contained in para 15 has been set aside by the first appellate Court, therefore, in these circumstances, the interest part is supposed to be paid by the owner of the bus and not by the Insurance Company. In support of his contention, he relies upon Joginder Singh and another v. Fire and General Insurance Company Ltd. and another 1985 PLR 642 in which it was held that the Insurance Company denied that the driver had a valid driving licence and that the driving licence, if produced, at the appellate stage, in such a suit, the liability should be that of the Insurance Company and it should be compelled to pay interest. It shall be entitled to recover the amount from the driver and the owner. I fully subscribe the arguments raised by the Insurance Company but one thing cannot be forgotten that the Insurance Company had undertaken to reimburse the claim to the owner of the bus. Liability of (he Insurance Company and the owner and the driver is joint and several. So far as the claimants are concerned, they are to get compensation jointly and severally. If the insurance Company pays the interest, it will always be open to it to claim reimbursement from the driver and the owner of the vehicle. It was then submitted on behalf of the learned counsel for the Insurance Company that the interest awarded by the Tribunal @ 12% is on the higher side and the Supreme Court in a recent decision in Sml. Kaushnuma Begum and others v. New India Assurance Company and others 2001(1) RCR 559 has awarded interest @ 9%. The judgment in this case is distinguishable on facts. In this case, the accident took place in the year 1991. The matter was disposed of by the Tribunal on 2.3.1998. Atthattime, the rate of interest awarded was 12%. In this view of the matter, 1 do not see any merit in this contention raised by the learned counsel for the Insurance Company.

12. The net result is that all the 3 appeals are allowed. Amount of compensation awarded by the Tribunal to the claimants shall be paid by the driver and the owner jointly and severally and by the Insurance Company. It is also hereby declared that it will always be open to the Insurance Company to claim reimbursement from the driver and the owner of the bus. The amount of compensation shall be paid within 2 months from the date of receipt of the copy of this order. Amount of Rs. 60,000/- deposited \\vith the appellant- Davinder Singh shall be returned to him. No order as to costs.

13. Appeals allowed.