(2009) 11 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3164 of 2008

Hanuman APPELLANT

Vs

Saroj Devi RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 149(2)(a)(ii), 15, 173

Citation : (2010) 1 AICJ 564 : (2010) 5 RCR(Civil) 596

Hon'ble Judges : A.N.Jindal, J

Judgement

N.Jindal, J.

1 This appeal is directed against the award dated 7.2.2008 passed by the Motor Accident Claims Tribunal, Fatehabad (herein referred as ''the Tribunal'') accepting the claim petition and awarding compensation to the tune of Rs. 3,26,872/ along with interest @ 9% per annum in favour of the claimants Nos. 1 to 4 and 6 (now respondents Nos. 1 to 4 and 6) and against the appellants. However, the Insurance Company was exonerated, as such, the appellants (owner and driver) have come up in appeal.

2 The main argument advanced by appellants is that the appellant Pahlad Singh @ Janak was holding a valid driving licence. Merely the licence was renewed late, the same cannot be termed as fake and invalid. In this regard, learned counsel for the appellants has placed reliance on the judgment delivered in case National Insurance Co. Ltd. v. Sushil Kumar and others, 2006(3) RCR(Civil) 642 : 2007 ACJ 2230 wherein it was observed that even on finding that the licence was fake or invalid or not renewed, the insurance company cannot be allowed to avoid its liability towards the insured unless the breach is so fundamental which has contributed to the cause of accident.

3 To the contrary, contention raised by the learned counsel for the Insurance Company is that since the period of licence stood already expired and it was not renewed for one year and one month, therefore, the appellant driver could not be said to be holding a valid driving licence. As regards the liability to pay first to

the claimants and then to recover from the insurer. It has been urged by Mr. Kapoor, that this objection could be raised by the claimants but not the insured, who having directly committed violation of the terms and conditions of the insurance policy and being a party to the contract. It was obligatory on the part of the insured to check the licence before handing over the steering of the vehicle to the driver.

4 Having heard the rival contentions, the prime question to be determined in this case is whether the appellant No. 2 was holding a valid driving licence at the time of accident. Hardip Singh (RW1) an official from the Licensing Authority deposed that the driving licence bearing No. 115979 was issued on 30.5.2000 in the name of Pahlad son of Bhup Singh resident of Shepura, District Sirsa, which was valid w.e.f. 30.5.2000 to 29.5.2005, after which it was renewed on 7.2.2006 to 6.2.2011.The authorities had also issued duplicate licence on 7.2.2006. He has proved the photo copy of the driving licence and photo copy of the original register on the record. Since the accident in this case occurred on 5.2.2006, at that time the validity period of the driving licence stood already expired and it could not be renewed up to 7.2.2006. In such situation, the said driving licence could not be taken as valid and inference could be drawn that the petitioner was not holding a valid driving licence at the time of accident. Reliance has been placed on the judgment delivered in case Ishwar Chandra and others v. Oriental Insurance Company Limited and others, 2007(2) RCR(Civil) 370:2007(2) R.A.J. 357:2007(2) Accident and Compensation Cases 63and Malta Prakasarao v. Malls Janaki and others, 2006 (1) Accident & Compensation Cases 300 (SC).

5 As regards the plea set up by the insurer that the impugned judgment is not valid inasmuch as the court should have ordered for recovering the amount first from the insurance company and thereafter it could recover the same from the appellants, it may be observed that the claimants could raise such plea and the company is bound to compensate them being third party, but it does not lie in the mouth of the owner being a party to the contract to say that the company may pay first to the claimants and then recover the same from him. Why this recovery be not made by the insured when he was at fault and he had handed over the steering to the person who had no valid driving licence. The owner in its obligation should have directed the driver to apply for renewal of the licence within a month from the date of expiry, but no such obligation was performed by him which was imposed upon him.

No other arguments were advanced.

No grounds to interfere.

Dismissed.

