(2006) 07 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 440 of 1994

Jasbir Kaur APPELLANT

Vs

Om Parkash and others RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Citation : (2007) 1 PLR 528

Hon'ble Judges : Pritam Pal, J

Advocate : Ms. Radhika Suri, Advocate, Shri Nalesh Bhardwaj, Advocate for Shri Ashok Aggarwal, Sr. Advocate., Advocates for appearing Parties

Judgement

Pritam Pal, J.

1. This appeal by Jasbir Kaur, owner of the offending vehicle No. HRA 9998, is directed against award dated 24.11.1993 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as `Tribunal''), whereby, Om Parkash, respondentinjured was awarded a total compensation of Rs. 50,000/ together with interest at the rate of 12 per cent per annum from the date of filing the claim petition till the date of realization. Further the liability to pay the aforesaid amount of compensation was fastened upon the driverrespondent No. 2 and the appellantJasbir Singh, owner of the said offending vehicle. Respondent No. 4National Insurance Company Limited, with which the offending vehicle was duly insured, was absolved from its liability, to pay the amount of compensation on the ground that Raghbir Singh, driver, was not found to have a valid driving licence on the day of occurrence of the accident, which had admittedly taken place on May 31, 1989.

2. The only point of argument, raised on behalf of the appellantowner of the offending vehicle, is that the learned Tribunal has committed a grave error by relying upon the report, Ex. R3, which indicates that the driving licence (MarkA) of Raghbir Singh, driver, was not issued by the Licensing Authority, Hyderabad. In that behalf, learned counsel for the appellant vehemently argued that a simple report (Ex. R3) placed on the file by the Insurer cannot be read into evidence

inasmuch as, the same has not been proved by examining a witness from the office of the Licensing Authority, Hyderabad. It was then also contended that simply by marking an Exhibit on a report does not dispense with the mode of proof of the document. In support of her this aforesaid points of arguments, reliance was also placed on the following catena of authorities :

1. Rukmani and others v. New India Assurance Co. Ltd. and others, 1999 Accidents Claims Journal 171;

2. Oriental Insurance Co. Ltd. v. Dalbir Singh and others, 1998 Accidents Claims Journal 1418;

3. National Insurance Co. Ltd. v. Santosh and others, 1999 Accidents Claims Journal 1262.

3. On the other hand, learned counsel for the respondentNational Insurance Company Limited has relied upon the decision of the Hon''ble Supreme Court rendered in New India Assurance Co., Shimla v. Kamla and others, 2001(3) RCR(Civil) 716 (SC) : 2001(4) Supreme Court Cases 342, and then contended that keeping in view the report, Ex. R3, which indicates that no such licence, as claimed by the driver, was ever issued from the office of Licensing Authority, Hyderabad, the owner and the driver cannot escape from the liability to pay the amount of compensation. He further contended that a fake driving licence, even if later on renewed by the Licensing Authority, does not acquire legal validity. In fact, it remains a counterfeit document. He then supported the findings of the learned Tribunal, whereby, the insurer was absolved from its liability to pay the amount of compensation on the ground that the driving licence, held by the driver of the offending vehicle, was invalid.

4. I have given my holistic view to the aforesaid rival contentions raised on behalf of the parties and have also gone through the above cited rulings and find no force in the aforesaid plea raised on behalf of respondent No. 4, i.e. National Insurance Company Limited, inasmuch as the report Ex. R3, relied upon by the Insurer, cannot be said to have been proved in the eyes of law. In fact, in order to prove the said report, it was incumbent upon the Insurer to summon the concerned official, with relevant records, from the office of the Licensing Authority, Hyderabad. Simply, by placing and marking of the exhibit on the file does not dispense with the proof of the document. In this regard, paragraph 7 of the judgment rendered in Santosh and others'' case (supra) is relevant, which is reproduced below :

"7. It is not being disputed that during the proceedings before the Tribunal no officer or other employee of the Licensing Authority, Delhi had been examined as a witness. Only a certificate Exh. R4 from the Licensing Authority had been produced in the form of a report. It is a settled principle of law that mere marking of the exhibit does not dispense with the proof of the document. The Supreme Court in the case of Sait Tarajee Khimchand v. Yelamarti Satyam, AIR 1971 SC 1865, had considered the said question and held that mere marking of an exhibit does not dispense with the proof of a document....."

Thus, in view of the observations made by their Lordships and in the given facts and circumstances of this case, the finding of the learned Tribunal pertaining to absolving of the respondentNational Insurance Company Limited, from making payment of the amount of compensation awarded in this case, is hereby setaside.

In the result, this appeal is allowed and respondent No. 4 i.e., National Insurance Company Limited is held liable to pay the entire amount of compensation to the claimantinjured. In case, the said amount of award has already been paid by the ownerappellant, the same shall be recovered by her from the Insurer, together with interest at the rate of 7 per cent per annum from the date of payment to the claimant till actual realization from the insurerrespondent No. 4 i.e., National Insurance Company Limited. Parties are left to bear their own costs.