(2019) 03 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3200 Of 2016

Magma Hdi General Insurance Co. Ltd. — APPELLANT

Vs

Shinder Kaur @ Surjit Kaur And Others — RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii), 166

Citation : (2019) 03 P&H CK 0209

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Pankaj Mehta, G.S. Sandhu, Deepak Gupta

Final Decision : Dismissed

Judgement

Avneesh Jhingan, J

The award dated 29.01.2016 passed by the Motor Accident Claims Tribunal, Faridkot (for brevity 'the Tribunal') has been assailed by the insurer of the vehicle bearing registration No. HR-57-7262 (hereinafter referred to as the 'offending vehicle').

The only issue raised in the present appeal is: the driving licence of the driver of the offending vehicle was not genuine in view of information received under Right to Information Act, 2005 (for short 'RTI Act').

The facts with regard to accident are not in dispute amongst the parties. A motor vehicular accident took place on 04.12.2014. The said accident proved fatal for Saun Singh @ Raju. FIR with regard to the accident was registered on the basis of statement of Jasvir Singh A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the legal heirs of Saun Singh @ Raju. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of Rs. 10,10,000/- alongwith interest @ 6% per annum.

Learned counsel for the appellant contends that licence No. 13688/Mansa, dated 07.12.2007 was issued in the name of driver of the offending vehicle. The same was renewed from the office of District Transport Office, Faridkot vide endorsement No. 3736, dated 06.08.2014. The insurer applied for information under the RTI Act and the reply was received that the record is not available, therefore, no information can be provided. The contention raised is that, in such circumstances licence is fake and recovery right should be granted to the insurer.

Learned counsel for the respondents defend the award and argue that neither any evidence nor any official either from the office of DTO, Mansa or from the office of DTO, Faridkot was examined by the insurer to establish that the licence was fake. Hence, the Tribunal rightly held the owner, driver and insurer of the offending vehicle jointly and severally liable to pay the compensation.

The law is well settled that the onus to prove that the driving licence produced in the claim proceedings is fake, is on the insurer. The Supreme Court in National Insurance Co. Ltd. vs. Swaran Singh and others; 2004 AIR (SC) 1531; held as under:-

"105. The summary of our findings to the various issues as raised in these petitions are as follows :

"(i) XX XX XX

(ii) XX XX XX

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability toward insured, the insurer has to prove that the insurer was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

XX XX XX"

It is forthcoming that the appellant never seriously agitated the issue with regard to the fake driving licence. Merely, an information was sought under the RTI Act that too only from the office, from where the driving licence was renewed. The reply received was that no information can be provided as no record is available.

No effort was made to check the genuineness of the driving licence from the DTO, Mansa as the licence was originally issued from the office of DTO, Mansa. The licence initially issued was valid from 07.12.2007 to 06.12.2010 and subsequently, it was renewed by the DTO, Faridkot and was valid upto 01.12.2016. The date of renewal shows that there was a valid driving licence on the date of accident. The onus to prove fake driving licence cannot be discharged on mere surmises and conjectures in the absence of any positive evidence.

No shadow can be cast upon the findings recorded by the Tribunal with regard to the issue that the driver was holding a valid and effective driving licence at the time of accident.

In view of afore-said discussion, no interference is called for in the impugned award.

Dismissed.