

(2016) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : FAO No.3204 of 2013

M/s Nav Bharat Senior Secondary School, Rajgarh Road,
Siwani Mandi, District Bhiwani

APPELLANT

Vs

Jaibir Singh

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2017) 2 PLR 505

Hon'ble Judges : Mr. Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Mr. Vikram Sheoran, Advocate, for the Appellants; Mr. Sanjeev Goyal, Advocate, for the Respondent No. 2; Ms. Sunita Nambiar, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J.—CM No.2284-CII of 2016

By this application, the appellants seek to place on record the route permit issued by the District Transport Officer-cum-Secretary, Regional Transport Authority, Bhiwani, valid upto 03.07.2016, specifying therein the places on which the bus bearing registration No.HR-61-A-7265 can ply as a contract carriage.

Since the document is being placed on record pursuant to a query by this Court, it is considered an essential piece of evidence and is consequently taken on record, as Ex.C1, under Order 41, Rule 47 (b) of the Code of Civil Procedure, read with Section 151 thereof.

The application is, consequently, allowed.

FAO No.3204 of 2013

This is an appeal filed by the owner of the bus, driven by respondent No.1, who was held to be negligent in driving the said bus in the impugned Award of the

learned Motor Accident Claims Tribunal, Hisar, leading to an accident in which respondent No.3 herein received multiple grievous injuries, on account of which he sought compensation from the three respondents impleaded in the claim petition, i.e. the present appellant and respondents No.1 and 2 herein.

Respondent No.2 is the insurer of the bus owned by the appellant.

Though the grounds of appeal also challenge the finding of the Tribunal on the issue of negligence of respondent No.1, arguments were mainly addressed with regard to the Tribunal granting respondent No.2 herein, i.e. the insurance company, rights of recovery of the compensation to be paid to respondent No.3.

However, since the grounds of appeal touch upon, even though very briefly, the issue of negligence, the entire Award of the Tribunal, is being referred to.

2. As per the claim petition filed by respondent No.3 herein (hereinafter to be referred to as the claimant), he along with his wife Geeta, was going towards Sector-15-A, Hisar, on his bicycle. His son Krishan Bahadur was following them on another bicycle. When they turned towards the house of Shri Bhajan Lal, Ex.Chief Minister, the "offending vehicle" bearing registration No.HR-61-A-7265, driven by respondent No.1 allegedly at a very high speed and in a rash and negligent manner, came from the side of Hisar and struck against the claimants' bicycle. He is stated to have fallen down and received multiple grievous injuries and was taken to the hospital for treatment. He sought a compensation of Rs.10,00,000/- from the respondents in the claim petition (hereinafter to be referred to as the respondents), on account of the pain and suffering and expenses he had incurred on his treatment.

3. Upon notice issued to them, the first two respondents, i.e. the present appellant and respondent No.1 herein), filed a written statement denying the entire allegations, including the factum of the accident, whereas respondent No.2 herein, i.e. the insurance company, other than the above, also pleaded that respondent No.1 was not holding a valid and effective driving licence and it was also argued before the Tribunal that the route permit that had been issued by the Transport Authorities, allowing the bus to ply as a school bus, did not include the word "Hisar" and as such, the accident having taken place in Hisar city, there was a contravention of the permit granted and consequently, the insurance company was not liable to pay any damages, if awarded by the Tribunal.

4. Upon the aforesaid pleadings, the Tribunal framed the following issues:-

"1. Whether the accident occurred on 31.10.2011 has been caused due to rash and negligent driving of respondent No.1 by driving vehicle bus bearing No.HR-61-A-7265, if so to what effect? OPP

2. If issue No.1 is proved, to what amount of compensation the petitioner is entitled to, if so, from whom? OPP

3. Whether the petition is not maintainable in the present form? OPP

4. Whether the petitioner has colluded with respondents No.1 and 2, if so to what effect? OPR3
5. Whether the petitioner has no locus standi to file the present petition? OPR
6. Whether the petition is bad for non-joinder and misjoinder of necessary parties? OPR 3
7. Whether the petitioner is stopped by his own act and conduct from filing the present petition? OPR 3
8. Whether the driver of the vehicle was not holding a valid driving license and the insured has violated the terms and conditions of the insurance policy, if so to what effect? OPR3
9. Relief."

Issues No.1 to 8 were eventually decided by the Tribunal together.

5. The claimant examined one Vinod Kumar as PW1, Dr. Tarun Sapra as PW2 and himself as PW3. He also tendered certain documents, Exs.P1 to P29, in support of his case.

The respondents, on the other hand, examined one Anand Kumar as RW1 and relied upon documents, Exs.R1 to R7, in support of their stand.

6. Since not even the driver of the vehicle, i.e. respondent No.1 herein, was examined by the respondents to refute the version of accident given by the claimant, the issue of negligence was decided in favour of the claimant with a very brief finding in that regard, (though nothing to the contrary, to dislodge that finding, has been pointed out even to this Court, on behalf of the present appellant).

Hence, I find no ground to interfere with that finding of the Tribunal, to the effect that it was the rash and negligent driving of respondent No.1 that led to the accident in which the claimant and respondent No.3 were injured.

7. Coming to the quantum of compensation awarded, the claimant examined Dr. Tarun Sapra as PW2 and produced medical bills/receipts, Exs.P1 to P28, to show that he had spent Rs.80,000/- on his treatment, on the basis of which he was awarded the said sum by way of actual amount spent.

As regards the compensation awarded to him under other heads, it is seen from the rather sketchy Award of the Tribunal, that he was granted Rs.20,000/- on account of pain and mental agony, Rs.20,000/- on special diet and for engaging an attendant to look after him during the period that he was hospitalised, though no specific period has been given in the Award.

Other than the above, he was also granted Rs.40,000/- for having suffered the injuries. Thus, though for pain and mental agony he was granted Rs.20,000/-, obviously, the other Rs.40,000/- awarded, would also actually come under this

head for pain and suffering.

In all, the claimant was awarded Rs.1,60,000/- as compensation.

Though I find that the Award does not sufficiently discuss the evidence on the basis of which Rs.60,000/- has been awarded for pain and suffering, however, in view of the fact that there is no challenge in the grounds of appeal also, to the quantum of compensation and it was also not argued that the quantum is excessive, the amount awarded by the Tribunal is not being interfered with. However, to repeat, it needs to be reiterated that the evidence discussed by the Tribunal is wholly inadequate with regard to the kind of injuries suffered, the period spent by the claimant in hospital, the kind of medical treatment that was administered to him and for how long he remained out of work.

8. Coming then to the main issue on account of which the appellant school has filed this appeal, challenging the rights of recovery given to the respondent-insurance company against the present appellant.

The Tribunal found that the word "Hisar" was not included in the original route permit of the "offending vehicle" and as such it was plied without a valid route permit in the city of Hisar. The Tribunal also referred to the statement of RW1, Anand Kumar, a permit clerk in the office of the Regional Transport Authority, Bhiwani, i.e. the authority that had issued the route permit. As per the said witness, the register in which the entry with regard to the route permit was made, in the office of Regional Transport Authority, did not show that the vehicle was authorised to ply in Hisar. However, the witness qualified that statement by saying that the word "Hisar" may have been inadvertently left out, while copying the exact route onto the register.

In view of the fact that the original route permit was never produced before the Tribunal and only a photocopy was produced, the Tribunal, upon considering the said document, held that the word "Hisar" appeared to have been added at a later stage by a mischievous person.

Hence, it was held that since the bus was plying at a place not authorised in the route permit, it constituted a breach of an essential condition of the insurance policy. Consequently, the right of recovery of the compensation paid to the claimant, was granted to the 2nd respondent herein, i.e. the insurance company.

9. This Court had, therefore, directed learned counsel for the appellant to produce the original route permit in Court, which he has done by annexing the said permit (4 pages), with an application filed under Section 151 CPC, seeking to place on record the same.

Though the application has not been moved under Order 41, Rule 47 of the Code, however, since it was sought to be placed on record upon directions of this Court, it has been so taken on record, taking it to be additional evidence in terms of Order 41, Rule 47 (b), read with Section 151 CPC.

It may be stated here that the learned counsel for the respondents have not refuted the fact that the original permit placed on record is actually the route permit issued by the Regional Transport Authority, Bhiwani.

10. A perusal of the permit is seen to bear out the observation of the Motor Accident Claims Tribunal, to the effect that the word "Hisar" (in Hindi) seems to have been added subsequently. Taken with the testimony of RW1, i.e. the Clerk from the office of Regional Transport Authority, to the effect that the word "Hisar" also did not figure in the register of the said Authority, showing the permit on which the appellant was allowed to ply the bus in question, I see no reason to disagree with that finding of the Tribunal.

No doubt, there is a possibility, that it may have been a wholly inadvertent mistake to have left out the town of Hisar from the route permit initially, subsequently adding it to the permit, as contended by learned counsel for the appellant. However, with no evidence led in that regard whatsoever, showing any valid amendment permitted in the route permit, by any order or sanction of the competent authority, there is no reason to interfere with that finding of the Tribunal.

11. Mr. Sheoran, learned counsel for the appellant, also submitted that the bus could have been, at the time of the accident, not taking students of the school but being driven in Hisar otherwise, for repairs etc. and as such, there would be no violation of the terms and conditions of the insurance policy.

However, with no evidence, whatsoever, led in that regard before the Tribunal, or even before this Court, obviously that contention cannot be accepted.

Further, Mr. Sanjeev Goyal, learned counsel for the respondent insurance company, has pointed to the terms and conditions of the insurance policy on record, which is admittedly the policy in question. It is seen that though the geographical area of the operation of the policy is shown to be simply, "India", however, the clause with regard to limitations to use of the vehicle by the insured reads as follows:-

"Limitation as to use.....

The policy covers use only for carriage of passengers in accordance with the permits (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act. The policy does not cover: 1) Use for organized racing, pace making, reliability trial or speed testing. 2) Use whilst drawing a trailer, except the towing (other than for reward) of anyone disabled mechanically propelled vehicle."

Thus, with the policy being limited only to use of the carriage (bus) for carrying passengers in accordance with the permits issued, and the permit itself not having been proved to be a permit to ply the bus in the city of Hisar, as discussed herein above, I find absolutely no error in the Award of the Tribunal, granting recovery rights to the respondent insurance company, the bus having

been involved in an accident at a place where it was not permitted to operate. Thus, the insurance company would be covered by the exclusion of liability to indemnify the insured, in terms of Section 149 (2) (a) (c) of the Motor Vehicles Act, 1988, inasmuch as, the vehicle in question was not being used for a purpose allowed by the permit under which the vehicle was being used, it being a transport vehicle.

12. Consequently, in view of the above, finding no merit in the appeal, it is dismissed, however, with no order as to costs.