(2014) 07 P&H CK 0375

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. Nos. 2109, 2110, 2111 and 2012 of 1996

National Insurance Co. Ltd. — APPELLANT

Vs

Jai Lasie — RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2015) 4 ACC 705 : (2015) ACJ 2209 : (2015) 177 PLR 113 : (2014) 3 RCR(Civil) 1036

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : R.M. Suri, Advocate for the Appellant

Final Decision : Allowed

Judgement

Lisa Gill, J.—This order shall dispose of four appeals filed by the National Insurance Company, namely F.A.O. No. 2109 of 1996 National Insurance Co. Ltd. Vs. Jai Lasia and others; F.A.O. No. 2110 of 1996 National Insurance Co. Ltd. Vs. Nanhi Devi and others; F.A.O. No. 2111 of 1996 National Insurance Co. Ltd. Vs. Naseeb and others; and F.A.O. No. 2112 of 1996 National Insurance Co. Ltd. Vs. Naseeb and others. Four claim petitions arising on account of one accident which took place on 08.11.1993 were decided by the impugned award.

2. All these appeals arise out of a common award dated 01.02.1996 passed by the Motor Accident Claims Tribunal, Karnal (for short ''Tribunal'') and are being decided together as they involve identical issue.

3. The Tribunal had held that the accident had been caused due to the rash and negligent driving of tractor No. HR-05/B/-3686 and had awarded the compensation to all the claimants as under:-

1) MACT Case No. 14 of 94, titled Naseeb Vs. Naresh Kumar & others, to the tune of disbursement to the claimants as 25,000/- to Naseeb injured.

2) MACT Case No. 13 of 94, titled Nanhi Devi Vs. Naresh Kumar etc., to the tune

of disbursement to the claimants as 25,000/- to claimant injured.

3) MACT Case No. 19 of 95, titled Pale Ram Vs. Naresh Kumar etc., to the tune of disbursement to the claimants as 12,500/- to claimant injured.

4) MACT Case No. 20 of 95, titled Jai Lasia etc. Vs. Naresh Kumar etc., to the tune of disbursement to the claimants as 72,000/- in equal shares to claimants widow and minor children on account of death of Mohinder Singh.

4. The appellant insurance company has challenged its liability to pay the said compensation on the ground that the driver and the owner had failed to produce the driving licence and the driver of the tractor i.e. Naresh Kumar (respondent no. 5) despite specific application by the insurance company as well as specific direction by the Tribunal vide orders dated 17.10.1995 and 16.11.1995 which are reproduced in para no. 8 of the grounds of appeal and which reads as under:-

Ld. Counsel for Naseeb and Nanhi has closed the evidence on behalf of the claimants. Sh. H.N. Bansal Advocate has closed the evidence by making a statement that he is not to lead any new evidence in the cases of Jai Lasia Devi and Pala Ram. His separate statement has been recorded in this regard. Now to come up for the evidence of respondents on 16.11.1995. Learned counsel for respondent no. 1 & 2 is directed to produce the driving license or copy of D.L. duly attested so that the Insurance Co. get the same verified from the competent authorities. The copy of D.L. at least be given within a week. Now to come up for evidence of respondents for 16.11.1995. Witnesses if any be summoned on P.F.

MACT, Karnal

Dated 17.10.1995

No evidence of the respondents is present. Request for adjournment. An application for production of documents filed. To come up on 12.8.95 for evidence of respondents and for arguments. Respondents no. 1 & 2 are directed to produce the documents as mentioned in the application.

MACT, Karnal

Dated 16.11.1995

5. It is contended that vide order dated 01.02.1996, the Tribunal has wrongly held that the Insurance Company had not led any evidence to prove that the driver of the offending vehicle was not possessing a valid driving license and simply filing an application for production of document was not enough. It is further submitted that no coercive method was adopted for the production of the document despite the Insurance Company''s application. In the absence of the production of a valid driving license by the owner/driver, the adverse inference necessarily has to be drawn against the said respondents, thereby proving the breach of terms and conditions of the Insurance Policy.

6. Having heard the learned counsel for the appellants and perusing the available

record, it transpires that the counsel for respondent nos. 5 & 6 had been directed to produce the driving license of the driver before this court vide order dated 19.01.1998 and the matter was adjourned to 16.03.1998. The order dated 16.03.1998 is reproduced as under:-

Admitted.

The amount of disbursement to the claimants as 25,000/- deposited at the time of filing the appeal is to be remitted to the Motor Accident Claims Tribunal, Ropar for disbursement to the claimants as per their share in the award.

7. Despite the opportunity granted by this court, it is apparent that the driving licence has still not been brought forth by the said respondent.

8. It has been held in Oriental Insurance Company Limited Vs. Niranjab Singh and others (2011-1) The Punjab Law Reporter, 574 that in such circumstances it would be held that the driver was not duly licenced and the owner had committed a breach of terms and conditions of the policy and therefore, the Insurance Company would be liable to satisfy the award and would be entitled to recover the same against the owner insured and the driver.

9. In the present case the Tribunal had refused to exempt the insurance company by observing that the vehicle in question was fully insured as per the policy Ex. RA on the date of accident and there is no evidence from the side of the insurance company that the driver of the offending vehicle was not possessing a valid driving licence on the date of accident.

10. In the event of the owner and the driver not producing the driving licence, it can not be said that the efforts made on the part of the insurance company, namely, moving an application for production of the documents is not enough. The finding of the Tribunal in this respect is erroneous and can not be sustained. Once the driving license was not forthcoming, it would be imprudent to expect the insurance company to lead further evidence to show that there was no valid and effective licence held by the driver of the offending vehicle. The insurance company has duly discharged its burden and adverse inference necessarily has to be drawn against the said respondent for not producing the driving license. It is relevant to note here that the driving licence has not been produced even before this court despite the opportunity granted vide order dated 19.01.1998.

11. No other argument has been raised and the quantum of compensation is also not assailed which is thus maintained as granted by the Tribunal.

12. Keeping in view the aforesaid discussion, these appeals are allowed to the extent that the insurance company is liable to satisfy the award but is entitled to recover the same against the owner insured and the driver of the offending vehicle.

13. No costs.

14. A copy of this order be placed on the record of other connected files.