
(2014) 07 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : C.R. Nos. 3860 and 3861 of 2009 (O&M)

National Insurance Co. Ltd.

APPELLANT

Vs

Jasbir Singh and Others

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2015) 3 ACC 31 : (2016) ACJ 311 : (2014) 176 PLR 588

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Advocate : Sandeep Suri, Advocates for the Appellant

Judgement

Rakesh Garg, J.—This judgment shall dispose of two revision petitions i.e. CR No. 3860 of 2009 and CR No. 3861 of 2009, as both these revisions have arisen out of one common order dated 28.03.2009 which was passed in two Execution applications filed against the driver/owner of the offending vehicle. An accident had taken place on April 29, 1999. In the aforesaid accident, one Kanta died and Ankush Ingola was injured. Two claim petitions were filed before the Tribunal. It was claimed that Jasbir Singh who was driving the truck bearing registration No. PBJ-9885, was rash and negligent in his driving, thereby causing death of Kanta and injuries to Ankush Ingola.

2. Learned Tribunal, on the basis of evidence on record, found that Jasbir Singh was driving the truck in question rashly and negligently. Subsequently, the claimants were held entitled to compensation. However, the plea raised by the Insurance Company was accepted to the effect that the original driving licence possessed by Jasbir Singh was not valid although the same had been subsequently renewed. Consequently, it was directed by the Tribunal that the Insurance Company shall make the payment of compensation to the claimants and recover the same from the driver and owner of the truck.

3. FAO No. 3082 of 2003 and FAO No. 3083 of 2003 filed against the aforesaid award of the Tribunal by owner of the offending vehicle was dismissed observing

as under:-

"In these circumstances, it is apparent that mere absence, fake or invalid driving licence, would not be in themselves, sufficient defence against the insured or the claimant. As a matter of fact, to avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of the vehicle by a duly licenced driver or one who was not disqualified to drive at the relevant time.

No evidence, in this regard, has been led to show that the appellant-owner of the truck was, in any manner, negligent for employing Jasbir Singh, who was in possession of invalid driving licence. In view of the aforesaid fact and keeping in view the law laid down by the Apex Court in Swaran Singh and others" case (supra), the present appeal is allowed and it is held that the amount of payment as awarded by the Tribunal shall be jointly and severally payable by all the persons namely driver, owner and Insurance Company.

The present appeals are, consequently, allowed in the aforesaid terms.

Before parting with this judgment, it is made clear that the Insurance Company shall be at liberty to seek the recovery of the aforesaid amount from the owner/driver of the truck in question before a regular Court, in accordance with law."

4. Admittedly, FAO No. 1036 of 2003 filed on behalf of the appellant-Insurance Company challenging the award of the Tribunal was also dismissed vide order dated 19.08.2003 observing as under:-

"Present: Mr. N.S. Swaitch, for the appellant.

Mr. Sachin Kapoor, for respondent No. 1.

Mr. G.S. Punia, for respondents No. 2 and 3.

We have perused the award. The Insurance Company has been given liberty to recover the amount of compensation from the owner and driver. We find no merit in the appeal.

Dismissed.

August 19, 2003

Sd/- H.S. Bedi Judge Sd/- Satish Kumar Mittal Judge"

5. Even SLP filed by the petitioner-Insurance Company against the judgment of the High Court was also dismissed by Hon"ble the Supreme Court of India vide order dated 07.01.2004.

6. The Insurance Company filed execution applications before the Executing Court seeking to recover the compensation amount from the owner/driver of the vehicle in question on the ground that they have been given the recovery rights

while passing the impugned award as well as by the High Court while deciding FAO No. 3082 of 2003 and FAO No. 3083 of 2003. The said execution applications were dismissed by the Executing Court vide impugned order dated 28.03.2009. The relevant paragraph of the impugned order reads thus:-

"This Court as Executing Court cannot be a regular Court. The award is passed by this Court as Tribunal and this Court will execute the award as Tribunal, not a regular Court. Therefore, the recovery right of the Insurance Company cannot be executed by this Court in view of the judgment passed by the Hon"ble High Court dated 22.02.2006. Accordingly, the execution application of the Insurance to recover to amount from the owner/driver is not maintainable before this Court in view of the above said judgment of the Hon"ble High Court. Accordingly, the execution application of the Insurance Company is, hereby dismissed."

7. The instant revision petitions have been filed challenging the aforesaid order.

8. At this stage, it is also relevant to refer to the order dated 19.11.2009 passed by this Court in these revision petitions which reads thus:-

"In view of the observations in FAO No. 3082 of 2003, the Insurance Company can seek the recovery from the owner-driver of the Truck involved in the accident before a regular Court in accordance with law. In view of the said observation, the Executing Court has rightly rejected the application of the petitioner Insurance Company.

Counsel for the petitioner agrees that in view of the observation existing against the Insurance Company in the order dated February 22, 2006, the petitioner is unable to avail the remedy of recovery by directly recovering the amount from the owner/driver of the Truck in execution proceedings. Counsel seeks time to make an attempt to seek the modification-review of the order earlier passed by this Court. Without expression of any opinion, the revision petition is adjourned sine die."

9. At this stage, it may also be noticed that clarification/modification applications filed on behalf of the petitioner have also been dismissed by this Court vide separate order passed in FAO Nos. 3082 and 3083 of 2003 of the even date. In view of the fact that the SLP filed on behalf of the petitioner against the award and judgment of this Court passed in FAO Nos. 3082 and 3083 of 2003 has become final and the fact that even modification application has been dismissed and keeping in view the observations of this Court in the order dated 19.11.2009, this Court finds no merit in these revision petitions.

Dismissed.