(2015) 02 P&H CK 0453

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 1912 of 1999 (O&M)

National Insurance Company Ltd. APPELLANT

Vs

Arfoon Nisa and Others RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 139, 18, 6(i)

Citation : (2015) 3 ACC 789

Hon'ble Judges : Anita Chaudhry, J

Bench : Single Bench

Advocate : R.N. Singal, for the Appellant

Final Decision : Allowed

Judgement

Anita Chaudhry, J—This appeal is at the instance of the Insurance Company seeking discharge of its liability of payment of compensation on the plea that the driver could not hold more than one driving licence. The first licence was found to be fake. The facts which emerge on perusal of the record make an interesting reading and shall be referred to during the course of discussion. A reference to the basic facts. A claim petition was filed by the legal heirs of Amantola who died in an accident in 1995. A claim petition was filed against Mool Chand, owner/ driver of the offending vehicle and the Insurance Company. The petition was contested and written statement was filed by both the respondents. A specific issue regarding driving licence was framed.

2. The owner-driver was proceeded ex parte after the issues were framed. He did not cross-examine any witness of the claimants. The claimants had summoned the record of the criminal case pending against respondent No. 1. The driving licence which was produced by the driver was placed on record. That licence was verified by the Insurance Company and they had summoned the licensing clerk. He made a statement that no such licence had been issued to Mool Chand and licence bearing No. 7105 of 1989 was issued to Bhawani Shankar son of Maan Singh.

3. The Insurance Company summoned the licensing clerk and then the Counsel representing the owner-driver appeared and presented another driving licence to the witness.

4. The Tribunal calculated the compensation and placed the liability of payment of compensation upon Insurance Company holding that licence No. 1278 of 1997 (Ex. PE) was a licence issued in favour of Mool Chand and it had been renewed and there was an endorsement which entitled the driver to drive the vehicle.

5. Dissatisfied with the finding recorded on the issue, this appeal was preferred by the Insurance Company. The appeal as against the claimants had been dismissed since the adjudication did not require their presence. Respondent No. 8 (owner-driver) failed to appear despite service.

6. The submission on behalf of the appellant-Insurance Company was that the driver had two driving licences and the second driving licence was introduced at the late stages of the case and a person could not hold two driving licences. It was urged that the driver-owner had filed his written statement and had never disclosed that he had another driving licence and the Insurance Company had got the license verified from the licensing authority and driving licence Ex. PA was produced by the driver before the police. Reliance was placed upon Shri Ram General Insurance Co. Ltd. Vs. Asha, (2014) 3 PLR 458 and Bharat Kharbanda Vs. New India Assurance Company Limited and Others, (2010) ACJ 1701 : (2009) 154 PLR 635 .

7. A perusal of the record reveals that respondent No. 1 who is the owner/driver had appeared and had filed his written statement. He participated in the proceedings till 24.4.1996. He failed to appear when the case was fixed for evidence of the claimants. He was proceeded ex parte on 8.8.1996. The case was fixed for respondents'' evidence in May. 1997 and the case was adjourned 7-8 times as service upon the clerk of the Licensing Authority. Agra could not be effected. The Insurance Company was directed to depute its officials to take the summons dasti. The Licensing Clerk appeared on 11.9.1998. The Counsel representing respondent No. 1 (owner-driver) appeared and cross-examined that witness and put license Ex. PE bearing No. M-1278 of 1997 to the witness.

8. Driving licence Ex. PA had been produced by the owner-driver to the police which was available on the record of the Trial Court. A perusal of the licence shows that it had been renewed up to 1997. The Licensing Authority, Agra had been summoned and it was reported that this licence was fake and the licence bearing No. 7105 of 1989 had been issued to Bhawani Shankar son of Maan Singh and not to Mool Chand. The question is whether the person could hold two licences''.

9. The owner-driver had stayed away after filing the written statement though he was watching the proceedings. When the Insurance Company was able to produce the Clerk from the concerned Licensing Authority, his lawyer came forward and presented another driving licence in the cross-examination. The

Insurance Company had no occasion to get that licence verified nor there was any need. It is apparent that the driver was holding two licences. The first licence produced by him was found to be fake. The question is whether the driver, could hold another licence. In this context. Section 6(i) of the Motor Vehicles Act, 1988 is relevant and reads as under:

"6. Restrictions on the holding of driving licences:

(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner''s licence or a driving licence issued in accordance with the provisions of Section 18 or a document authorizing, in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle."

10. The language of the aforesaid section is clear that a person can have only one driving licence at one point of time. If any addition is to be made, the same has to be endorsed in the same driving licence.

11. Why a person would have two driving licences. The reason is obvious - to hood-wink the law enforcement agencies. A particular driving licence is to be used in a particular set of circumstances as per convenience of the user. In criminal proceedings a forged driving licence is handed over to the police, but in proceedings under Motor Vehicles Act, to avoid civil liability, another driving licence which is perhaps obtained for that very purpose is tendered. The method adopted is too mischievous. The object is to deceive the Insurance Companies. Should the Tribunal or the Court become a party to such frauds by ignoring forgery and hold that at least one driving licence was genuine?

12. The answer must be ''no''. It was never the intention of the Legislature framing the law. While granting compensation, the Tribunal has to uphold the law. Anybody found to be tinkering with it has to be dealt with a strong hand. Such malpractices cannot and should not be tolerated. The fact remains that the driving licence which respondent No. 1 was holding at the time of the fateful accident was a forged document. Merely because the appellant later on came up with another driving licence in his name, does not mean that at the time of the accident, respondent No. 1 was holding an effective driving licence.

13. The owner-driver could not avoid his liability by producing another licence. The driver was holding a licence which was forged. The Insurance Company should have been granted the right to recover the amount from the owner-driver in the above circumstances. Keeping this in view, the appeal filed by the Insurance Company is allowed and they are given the right to recover the amount paid to the claimants from the owner driver.

The appeal is allowed.

