(2011) 11 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 3300, 5172, 5173, 5174, 5175 and 5176 of 2011

National Insurance Company Ltd. APPELLANT

Vs

Balraj and Others RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 6

Citation : (2012) 1 RCR(Civil) 898 : (2012) 2 TAC 858

Hon'ble Judges : Vijender Singh, J

Bench : Single Bench

Advocate : R.C. Kapoor, Insurance Company, for the Appellant; Parminder Paul Sharma, Advocate Respondent No. 2 in FAO No. 3300 of 2011 and for respondent No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—F.A.O. No 3300 of 2011 has been brought by the National Insurance Company Limited challenging the award dated 23.2.2011 passed by Motor Accidents Claims Tribunal, Fatehabad (for short, "the Tribunal") while the other five appeals, i.e. F.A.O. Nos. 5172 to 5176 of 2011 have been brought against the award dated 15.6.2011 passed by the same Tribunal. The awards have been challenged on the point of validity of the driving licence, decided under issue No. 3 in the award dated 23.2.2011 and under issue No. 5 in the award dated 15.6.2011. In both the awards under the aforesaid issues, the Tribunal had returned a finding against the appellant, Insurance Company in identical terms to the effect that it has failed to prove Paramjit Singh, respondent No. 1 to be not holding a valid and effective driving licence on the date of accident and, therefore, it cannot escape from its liability to indemnify the insured. Since the appellant and the contesting respondents, i.e., respondents No. 2 and 3 are the same and no appeals have been filed by the claimants, these six appeals are being decided by way of this common judgment. The facts necessary to decide these appeals may be taken from FAO No. 3300 of 2011 and they are as under: On 28.12.2007, Balraj along with various other persons namely, Shishpal Singh, Madho Ram, Vijay Mahiya, Sushil Bishnoi, Joginder Singh, Devi Lal, Suba Singh and Puran Chand left Fatehabad for Chandigarh in a Scorpio bearing registration No. HR-62-2111, which was driven by Balraj. At about 8.30 a.m., when Balraj was near Simran Dhaba in the area of Samana, a Tata 407 bearing registration No. PB-13N-5913, driven by respondent No. 1 in a rash and negligent manner, suddenly came on the road from the side of the dhaba. Balraj applied brakes to his vehicle, but despite it, the Scorpio had hit Tata 407. All the persons traveling in the Scorpio suffered injuries. The Scorpio was also damaged in the accident. Respondent No. 1 escaped from the spot leaving his vehicle there. The injured were taken to Civil Hospital, Samana by a person passing thereby. A criminal case was got registered against respondent No. 1 for causing this accident.

2. Respondents No. 1 and 2 in their joint written statement have denied the accident to have been an outcome of rash or negligent driving of Tata 407 in question. According to them, Balraj himself was busy in talking on his mobile phone while driving his Scorpio.

3. National Insurance Company Limited, respondent No. 3, besides taking the aforesaid plea, has claimed that the Tata-407 was not being driven by a person holding a valid and effective driving licence at the time of the alleged accident. It was averred that the vehicle in question was being used in contravention of the terms and conditions of the insurance policy.

4. On the pleadings of the parties, the following issues were framed by the Tribunal, in the petition decided on 23.2.2011.

1. Whether Balraj and Sushil Kumar received injuries in a Motor vehicle accident on 28.12.2007 which took place statedly due to rash and negligent driving of Tata 407 bearing registration No. PB-13N/5913 by Paramjit Singh (respondent No. 1) which was statedly owned by Sukhwinder Singh (respondent No. 2) and was insured with the National Insurance Company Limited (respondent No. 3)?

2. If issue No, 1 is proved, whether petitioner is entitled to any compensation, if so, how much? OPP

2-A If issue No. 1 is proved, whether petitioner Sushil Kumar is entitled to any compensation, if so how much? OPP

3. Whether Tata 407 bearing registration No. PB-13N/5913 was being driven by a person who was not holding a valid and effective driving licence? OPR3.

4. Whether Tata 407 was being driven in violation of terms and conditions of insurance policy? OPR3

5. Relief.

5. The following issues were framed in the claim petitions, which were decided vide award dated 15.6.2011.

1. Whether Devi Lal, Madho Ram and Pooran Chand received injuries in a Motor vehicular accident which took place on 28.12.2007 statedly due to rash and negligent driving of Canter bearing registration No. PB-13N/5913 by Paramjit Singh (respondent No. 1) which was owned by Sukhwinder Singh (respondent No. 2) and was insured with the National Insurance Company Limited (respondent No. 3) & Scorpio bearing registration No. HR-62/2111 which was driven and owned by Balraj (respondent No. 4) and was insured with ICICI Lombard General Insurance Company? OPP

1-A Whether Suba Singh petitioner received injuries in a Motor vehicular accident which took place on 28.12.2007 statedly due to rash and negligent driving of Canter bearing registration No. PB-13N/5913 by Paramjit Singh (respondent No. 1) which was owned by Sukhwinder Singh (respondent No. 2) and was insured with the National Insurance Company Limited (respondent No. 3) and Scorpio bearing registration No. HR-62/2111 which was driven and owned by Balraj (respondent No. 4) and was insured with ICICI Lombard General Insurance Company? OPP

1-B Whether Vijay Kumar petitioner received injuries in a Motor vehicular accident which took place on 28.12.2007 statedly due to rash and negligent driving of Canter bearing registration No. PB-13N/5913 by Paramjit Singh (respondent No. 1) which was owned by Sukhwinder Singh (respondent No. 2) and was insured with the National Insurance Company Limited (respondent No. 3) & Scorpio bearing registration No. HR-62/2111 which was driven and owned by Balraj (respondent No. 4) and was insured with ICICI Lombard General Insurance Company (respondent No. 5)? OPP

2. If issue No. 1 is proved, whether petitioner Devi Lal is entitled to any compensation, if so how much? OPP

3. If issue No. 1 is proved, whether petitioner Madho Ram is entitled to any compensation, if so how much? OPP

4. If issue No. 1 is proved, whether petitioner Puran Chand is entitled to any compensation, if so how much? OPP

4A. If issue No. 1-A is proved, whether petitioner in case titled Suba Singh v. Paramjit Singh etc. bearing No. 78 MACT of 7.11.2008 is entitled to any compensation for the injuries suffered by him, if so how much? OPP

4B. If issue No. 1-A is proved, whether petitioner in case titled Vijay Kumar v. Paramjit Singh etc. bearing No. 66 MACT of 11.6.2008 is entitled to any compensation for the injuries suffered by him, if so how much? OPP

5. Whether Canter bearing registration No. PB-13N/5913 was being driven in violation of terms and conditions of insurance policy? OPR3

6. Whether Canter bearing registration No. PB-13N/5913 was being driven in violation of terms and conditions of insurance policy ? OPR3

7. Whether Scorpio bearing registration No. HR-62/2111 was being driven by a person who was not holding a valid and effective driving licence ? OPR5.

8. Whether Scorpio bearing registration No. HR-62/2111 was being driven in violation of terms and conditions of insurance policy ? OPR5

9. Relief.

6. Taking evidence of the parties, learned Tribunal has decided the question of validity of the driving licence against the Insurance company. Consequently, the liability in all the claim cases was held to be joint and several of the owner, driver of the offending vehicle and the insurer.

7. Aggrieved by the aforesaid finding as also the decision rendered by the Tribunal in the claim petitions, the insurer has brought these appeals.

8. I have heard Mr. R.C. Kapoor, learned counsel for the appellant-insurer and Mr. Parminder Paul Sharma, learned counsel for respondents No. 2 and 3. I have gone through the record of the appeals carefully.

9. Learned counsel for the appellant has submitted that Sh. Rajinder Goyal, Advocate, had been appointed as Local Commission in the case and a copy of the driving licence, mark ''E'', was handed over to him to verify its genuineness. According to him, said Sh. Rajinder Goyal, Advocate visited the Licensing Authority, Jhansi and recorded statement of the Licence Clerk and had submitted his report that the driving licence No. 1273/JHS/91 had been issued in the name of one Parmod Puri son of Ramesh Puri, resident of Civil Line, Jhansi (UP). He had further submitted that this copy of licence was handed over by respondent No. 1 to the Investigator of the insurer and as it was found fake, learned Tribunal was not justified in ignoring the report of the Local Commission and giving a finding against the insurer.

10. Learned counsel for the appellant has further submitted that respondent No. 1 had produced on record another copy of driving licence as mark ''A'' and claimed the same to be a valid and effective driving licence on the date of accident. According to him, a person is prohibited by the provisions of section 6 of the Motor Vehicles Act, 1988 (for short ''the Act'') from obtaining two driving licences. According to him, exceptions to this rule contained in the provisions of section 6 of the Act are there but the facts of the case show that they are not available in this case. He has further submitted that when a person is not entitled to obtain second driving licence, the driver could not have another driving licence, a copy of which is mark ''A'' According to him, the licence of the driver here automatically stands proved as fake.

11. Learned counsel for the appellant has further submitted that when the first driving licence was found fake from the report of the Local Commission, the Tribunal was required to place reliance upon the report of the Local Commission and the only finding that could be given on this evidence was that respondent No. 1 was not holding a valid and effective driving licence. According to him, in

the event of this finding, the insurance company could though be made liable to pay compensation, yet it was required to be clothed with the recovery rights against the owner and driver of the vehicle.

12. Learned counsel for respondents No. 2 and 3 has submitted, on the other hand, that learned Tribunal was fully justified in rejecting the report of the Local Commission because the very foundation for believing that report and giving the finding that respondent No. 1 was not holding a valid and effective driving licence on the date of accident, was missing in this case. According to him, before the report of Local Commission could be relied upon to give the aforesaid finding, the insurance company was required to prove that mark ''E'', was the copy of the licence given by respondent No. 1 or respondent No. 2 to the Investigator of the insurance company. According to him, learned Tribunal has found mark ''E'' as not proved to be the copy of licence of respondent No. 1 and the licence which was produced by respondent No. 1 as mark ''A'' on the record, was not got verified by the insurance company. It is further submitted that in these circumstances, the finding recorded by learned Tribunal is valid and it cannot be interfered with.

13. Mark ''E'', the driving licence, which was entrusted to Sh. Rajinder Goyal, Advocate, for verification was not produced on the record of the Tribunal by respondent No. 1. It was produced by the insurance company itself. When the driver claims that his driving licence is different from the same and he produced a copy of the same, the insurance company was required to prove the driving licence produced by him to be fake.

14. No person to whom the driving licence mark ''E'' was claimed to have been given by respondent No. 1, is examined by the insurance company at the trial. When the driver had disputed his being holder of the original of mark ''E'', the insurance company was required to lead evidence of the Investigator to whom it is claimed that respondent No. 1 gave mark ''E''. In the absence of that evidence, it has been rightly held by learned Tribunal that the driving licence, mark ''E'' is not proved to be of respondent No. 1. In the face of this finding, it cannot be said that it is a case of respondent No. 1 holding two licences. Therefore, the decision of a co-ordinate Bench of this Court in Bharat Kharbanda v. New India Assurance Company Limited and others. Civil Revision No. 4355 of 2007, decided on 16.4.2009, referred to by learned counsel for the appellant, has no application to the facts of this case. No evidence has been led by the insurance company regarding the genuineness or otherwise of mark ''A'', copy of the driving licence produced by respondent No. 1.

15. Undisputedly, onus to prove that the driving licence held by the driver of the offending vehicle was fake and that by entrusting the vehicle to such a person, the insured had committed breach of terms and conditions of the insurance policy, is on the insurance company. The said onus, therefore, appears to have not been discharged in these cases by the insurance company and the finding recorded by learned Tribunal is, therefore, unquestionable. For the aforesaid

reasons, I find that no exception can be taken to the finding of learned Tribunal on the question of violation of terms and conditions of the insurance policy by the insured by entrusting the vehicle to a person not holding a valid and effective driving licence on the date of accident. Therefore, the appeals are devoid of merit and are dismissed.

Appeal dismissed.

