
(2011) 10 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No's. 3859 of 2009 and 1124 of 2010

National Insurance Company Ltd.

APPELLANT

Vs

Rajender Giri and Others

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2013) ACJ 1213 : (2012) 2 RCR(Civil) 183 : (2012) 2 TAC 418

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : L.M. Suri, with Mr. Neeraj Khanna and Mr. Vikram Bali, in F.A.O. No. 3859 of 2009 and Mr. O.P. Gupta in F.A.O. No. 1124 of 2010, for the Appellant; L.M. Suri with Shri Neeraj Khanna and Shri Vikram Bali, Advocates for Respondent No. 3 in F.A.O. No. 1124 of 2010, Shri O.P. Gupta, Advocate for the Respondent No. 1 in F.A.O. No. 3859 of 2009 and Shri Saurabh Kaushik, Advocate for the Respondent Nos. 2 and 3 in F.A.O. No. 3859 of 2009 and for Respondent Nos. 1 and 2 in F.A.O. No. 1124 of 2010, for the Respondent

Final Decision : Allowed

Judgement

Vijender Singh Malik, J.—Rajender Giri, the claimant, who had suffered injuries in a road side accident has brought FAO No. 1124 of 2010. It has been brought with a delay of 216 days in filing the same. He has claimed that he has been working as a labourer in a factory and on account of the accident, his income had stopped and he was not in a position to even apply for copy of award, passed by the Tribunal. He has submitted that he could apply for the copy of award only on 8th September, 2009 and the same was supplied to him on 11th September, 2009 and, therefore, the delay in filing the appeal. Learned Counsel for the respondents in FAO No. 1124 of 2010 have no serious objection to the prayer made in the application. In view of the same, the application for delay of 216 days in filing the appeal, is allowed.

2. For the reasons mentioned in the application, delay of 27 days in re-filing FAO No. 3859 of 2009 is condoned.

3. In FAO No. 3859 of 2009, the National Insurance Company Limited, saddled with the liability to pay compensation, has sought recalling of the order dated 22nd February, 2009 passed by learned Motor Accident Claims Tribunal, Panipat (for short "the Tribunal") and for grant of recovery rights to it against the owner and driver on the ground that the offending vehicle on the date of accident did not have a route permit for plying it in the State of Haryana.

4. In FAO No. 1124 of 2010, Rajender Giri, the claimant has sought enhancement of compensation on various grounds. The brief facts required to be noticed for decision of these two appeals are as under :

5. On 7th February, 2008 Rajender Giri, petitioner alongwith one Satish was going on a motorcycle from Kaithal to Panipat. When they were near Bus Stand, Nimwala, their motorcycle was hit by a Tata vehicle bearing Registration No. RJ-13/1 G-0695, driven by respondent No. 1. The claimant suffered injuries in the said accident in which his companion died. The appellant sought compensation in a sum of Rs. . 5,00,000/- for the multiple injuries suffered by him in the said accident.

6. The respondents resisted the claim petition denying the very accident to have taken place. It is claimed by respondent Nos. 1 and 2 that respondent No. 1 has been falsely implicated in a criminal case got registered against him. Respondent No. 3, however, took some objections, on the basis of which, it is claimed that the terms and conditions of the insurance policy were violated and that it is not liable to pay compensation to the petitioner.

7. On the pleadings of the parties, the following issues were framed by the Tribunal :

1. Whether accident occurred due to rash and negligent driving of vehicle No. RJ-13/1G-0685 by respondent No. 1.? OPP

2. Whether claimants are entitled to recover compensation from respondents, if so to what extent ? OPP

3. Whether respondent No. 1 had no valid and effective driving licence at the time of accident ? OPR

4. Relief

8. The parties led their respective evidence and hearing learned Counsel for the parties, learned Tribunal took up all the three issues together and has observed in para No. 11 of the award that respondent No. 3 has not led any evidence to show that respondent No. 1 was not holding a valid and effective driving licence on the date of accident. In para No. 13 of the award, the argument of learned Counsel for respondent No. 3 has been noticed to the effect that respondent No. 1 did not possess any route permit to ply the vehicle in the State of Haryana. This contention of learned Counsel for respondent No. 3 was repelled by observing that no doubt in the absence of route permit respondent No. 1 may

have driven the offending vehicle illegally in the State of Haryana yet this lapse on his part shall not absolve the insurer from its liability towards the petitioner. Learned Tribunal had consequently awarded a sum of Rs. . 90,000/- as compensation to the injured.

9. Aggrieved by the aforesaid award, the claimant as well as the insurer have brought these two appeals.

10. I have heard learned Counsel for the parties and have gone through the record.

11. The first point argued by Mr. L.M. Suri, Senior Advocate for the appellant is that route permit Ext.RX authorized the vehicle in question to be plied in the State of Rajasthan but, there was no valid permit with respondent No. 1 to ply the same in the State of Haryana. According to him, by bringing the vehicle in the State of Haryana and having the route permit authorizing him to ply the same in the State of Rajasthan, the insured has violated the terms and conditions of the insurance policy and, consequently, the Insurance Company could not be saddled with responsibility to pay compensation and, if, it was done, it would be entitled to recover rights against the owner and driver of the vehicle in question. In support of his submission, he has drawn my attention to a decision of Hon'ble Supreme Court of India in National Insurance Co. Ltd. v. Challa Bharathamma and others, 2005 (1) P.L.R. 102 : 2005 (1) T.A.C. 4 (S.C.). In the reported case, an auto rickshaw was being plied without a permit and it was held to be an infraction of the terms of the insurance policy and consequently, it was held that the insurer cannot be held liable.

12. Learned Counsel for respondent Nos. 1 and 2 has submitted that it is not a case where there was no route permit authorizing the vehicle to be plied on the road. There was valid route permit with the owner to ply it in the area of Rajasthan and by the mere fact that he did not have a route permit for plying the same in the State of Haryana, it cannot be said that the insured has violated the terms of the insurance policy. He has submitted that the ratio of National Insurance Co. Ltd.'s case (supra) has been noticed by this Court in the decision given in FAO Nos. 554 and 555 of 2008 dated 27th September, 2010 and it has been distinguished for the reason that in the reported case, auto rickshaw, a transport vehicle was being plied without a permit and the situation would be different, if the vehicle was having permit to drive in a particular area but was found driven in another area. It has been held in the said case that the decision in National Insurance Co. Ltd.'s case (supra) would apply only in a case where there is no permit at all.

13. Learned Counsel for the appellant in FAO No. 1124 of 2010 has submitted that the injured remained hospitalized on 7th February, 2008 and 8th February, 2008 in the first instance and, thereafter, for a month with effect from 20th June, 2008 and in the course of the hospitalization, he has lost a sum of Rs. . 40,000/- as loss of income. He has submitted that the medical expenses have also not

been properly assessed. According to him, the claimant had suffered bed sores and the said statement of the claimant was not taken into consideration while awarding compensation for pain and suffering in a sum of Rs. . 20,000/-. He has, thus, prayed for enhancement of the compensation.

14. In National Insurance Co. Ltd.'s case (supra), an auto rickshaw was being plied without a permit. It was held to be a violation of the terms and conditions of the policy on the ground of which defence was available to the insurer u/s 149(2) of the Motor Vehicles Act, 1988 (for short "the Act") to avoid liability of indemnifying the insured. In the case in hand, the vehicle had a route permit which was proved on record as Ext.RX. The said route permit authorized the vehicle to be plied in the State of Rajasthan. However, the vehicle had been brought to the State of Haryana and the accident has occurred there.

15. It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence u/s 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in National Insurance Co. Ltd.'s case (supra) would not stand attracted to the facts of this case.

16. Coming to the appeal brought by the claimant, I do not find much scope for enhancement of the compensation. Except for the compensation awarded for pain and suffering and non-awarding of compensation of transportation charges, I do not find any scope for enhancement of compensation on other aspects.

17. No amount has been awarded to the claimant for the expenses on transportation. In case of accident victims suffering injuries in the road side accident, special conveyance is required to transport the victims because such victims cannot travel in public transport. The fact that the petitioner suffered bed sores also cannot be over looked. Bed sores are more painful than the injuries suffered on account of the accident. In these circumstances, I enhance the compensation in a sum of Rs. . 20,000/- for pain and suffering and award a sum of Rs. . 10,000/- for expenses on transportation and consequently find the appellant in FAO No. 1124 of 2010 to be entitled for enhancement of compensation in a sum of Rs. . 30,000/-. Keeping in view the aforesaid discussion, the appeal preferred by the Insurance Company bearing No. 3859 of 2009 is dismissed while the appeal preferred by the claimant bearing No. 1124 of 2010 is allowed enhancing the compensation from Rs. . 90,000/- to Rs. . 1,20,000/-