
(2006) 08 P&H CK 0289
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 707 of 2001

Surinder Pal Singh

APPELLANT

Vs

Paramjit Kaur and others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2006) 4 RCR(Civil) 662

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. S.K.S. Bedi, Advocate and Mr. Kamaldeep Singh Sidhu, Advocate for Mr. S.N. Chopra, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. This order will dispose of FAO No. 707 of 2001 titled as Surinder Pal Singh v. Paramjit Kaur and others and FAO No. 708 of 2001 titled as Surinder Pal Singh v. Charanjit Kaur and others.

2. These two appeals have been filed against the award dated 24.5.2000 passed by the Motor Accident Claims Tribunal (for short the "Tribunal"), Fatehgarh Sahib, vide which claim petitions filed by the claimants have been allowed.

3. The appellant in these two appeals has only challenged the findings recorded by the learned Tribunal on issue No. 3 vide which the Insurance Company has been absolved of its liability to pay the compensation by holding that the driving licence held by respondent No. 6 herein was fake. The findings on issue No. 3 read as under :

"The onus to prove issue No. 3, was on the Insurance Co. The respondent No. 2, in order to establish that he was holding a valid driving licence, produced Licence No. B39468/86, valid for the period w.e.f. 13.9.1986 to 11.9.1995, issued by Licensing Authority, Guwahati, and renewed on 18.12.1992 w.e.f. that date to 11.9.1995. There is no denying a fact that the accident took place on 17.3.1994. In order to falsify the validity of the licence, Insurance Company got a Local Commissioner appointed for examining Licensing Authority, Guwahati. Sh. Brij

Mohan Singh, Local Commissioner went to Guwahati and recorded the statement of DTO, Guwahati, through his Assistant Mubarik Ali and submitted his report as under :

"Mubarik Ali LDA of DTO Office Kamrup, Guwahati (Assam) stated before me that Driving Licence No. B39468/86, in the name of Balwinder Singh son of Karnail Singh has not been issued by this office. Hence my report is for kind perusal of this Hon"ble Court.

3.6.1998

Submitted by

Brij Mohan Singh, Advocate

Local Commissioner,

Fatehgarh Sahib."

The said report is a part of this record. As per provisions of Order 26 Rule 10 CPC, the report made by Local Commissioner is admissible in evidence. No objection to this report had been filed by either of the parties. No rebuttal evidence to this report has been led by the claimants or respondent Nos. 1 and 2. As such this Tribunal has no option, but to believe the report made by Local Commissioner which is already a part of the record and hold that Licence No. B39468/86, was never issued by Licencing Authority, Guwahati on 13.9.1986.

The Id. counsel for respondent Nos. 1 and 2 has further contended that though the driving licence may be fake or invalid yet the same has been validly renewed by the Licencing Authority, therefore, the Insurance Company cannot be exonerated from the liability for which it is otherwise liable. He has further urged that as per licence Ex. R.4 it has been renewed by the Licencing Authority on 15.12.1992 and is valid upto 11.9.1995 by the Licencing Authority, DTO, Amritsar, which is clear from Ex. R4. Therefore, the Insurance Company may be held liable for the compensation if assessed against the respondent Nos. 1 and 2. Having given my thoughtful consideration to this argument advanced on behalf of the respondent Nos. 1 and 2, I do not find any merit in it. The respondent Co. examined Jaskaran Singh, Clerk, Office of DTO, Amritsar on Entry No. 2349. He has further gone on to state that as per Entry No. 2349 Ex. R2, a licence has been issued to Vajinder Kumar son of Kishan Chand C/O Jugal Kishore, Chowk Lachmansar, Amritsar, for motor car and scooter only and according to their record no licence has been issued to Balwinder Singh, respondent No. 2. He has further testified that the Entry No. 2349 is signed by Dr. Amar Nath, DTO. He has further proved the verification report Ex. R3 given by DTO Officer Amritsar which also reflected that the above referred licence has not been issued or renewed by the said office. The respondent Nos. 1 and 2, have relied upon the verification reports made by Shaviner Kaur Ex. RX and Ex. RY wherein it is mentioned that the said licence has been renewed by DTO Office, Amritsar upto 11.9.1995. They have examined Shri Kishan Singh Steno, DTO, Amritsar, as (RW5). I have

examined his statement minutely but his testimony is not worth reliance. He has also proved the entry Ex. RY, which is signed by Devinder Singh, Asstt. in DTO Officer, Amritsar. He has admitted that Shavinder Kaur is still working in the office who had made the report on Ex. RW5/A Ex. RX and RW5/B Ex. RY. But she has not appeared in the witness box to prove the reports. He admits that Shavinder Kaur is the author of the report Ex. RW5/A RX and RW5/B RY, but she has not dared to step to the witness box for the reasons best known to her. He has only identified her signatures at Ex. RW5/B RY. He has proved the renewal report by producing copy of Register dated 18.12.1992, Ex. RW5/A/RX. Strangely enough this entry in the register of 18.12.1992, with regard to renewal of the licence falsifies the renewal itself. If the licence has been renewed on 15.12.1992, then it should have been amongst the entry of 15.12.1992. This page of the register further transpires that after making the entry of 15.12.1992, there is an entry of 14.12.1992. It is also not known as to how the entry of 14.12.1992 came to be recorded after 15.12.1992. It has also come in evidence that the said register is not page marked at all and none of the entries is signed by any incharge of the office i.e. concerned DTO. It is also not proved on record as to who made these entries. It is also pertinent to mention here that neither Shavinder Kaur nor Devinder Singh were competent to make such reports. This report should have been issued by DTO concerned but the same has not been issued. Under these circumstances, this Tribunal has no option but to conclude that the reports Ex. RX, RY, RW5/A and RW5/B RY stand unsupported by any original record. Therefore, the same are hardly sufficient to hold that the respondent No. 2 was holding a valid driving licence at the time of accident. The counsel for the respondents have urged that Surinder Pal Singh owner of the truck while appearing in the witness box has testified that he had verified about the driving licence from DTO, Amritsar, as well as from Guwahati. I have failed to subscribe to his statement. Had he taken little pain to make verification of the driving licence Ex. R4, then he positively would have come to know that neither the driving licence Ex. R4 was issued by Licencing Authority, Gauhati nor it was renewed by DTO, Amritsar. Consequently, I decide this issue No. 3, in favour of the Insurance company and against the claimants and respondents Nos. 1 and 2."

Mr. S.K.S. Bedi, learned counsel, appearing for the appellant challenged the findings of the learned Tribunal on issue No. 3 by contending that it is an outcome of misreading of the evidence produced on record with regard to renewal of licence by the Registering Authority, Amritsar. However, there is no necessity to consider this aspect of the matter as the appeals deserve to be allowed even on the findings recorded by the learned Tribunal in view of the law laid down by the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. v. Swaran Singh and others, 2004(2) RCR(Civil) 114 : AIR 2004 SC 1531. The Hon"ble Supreme Court in the said judgment has been pleased to lay down as under :

"Summary of Findings

105. The summary of our findings to the various issues as raised in these petitions are as follows :

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of Section 149 have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards 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 condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time.

(iv) The insurance companies, are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise) does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claims under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with subsection (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only, if, as required by subsection (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in subsection (4) with proviso thereunder and subsection (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular Court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

4. In the present case no evidence was led by the Insurance Company to show that the owner was negligent and had not taken reasonable care to find out whether the driving licence of the driver was fake or otherwise. As a matter of fact, ample evidence was produced on record to show that the licence was rightly renewed by the Registering Authority. Thus, it would be seen that in the case in hand the owner had satisfied himself that the driver had a licence and was driving competently. In view of this, there was no reason for the learned Tribunal

to absolve the Insurance Company of the liability.

Accordingly, these appeals are allowed and findings recorded on issue No. 3 by the learned Tribunal are reversed. It is held that the Insurance Company would be liable to pay the compensation awarded to the claimants and the liability is held to be joint and several, between, owner, driver and the Insurance Company.

Appeals allowed.