

(2014) 09 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 4666 of 2009

The New India Assurance Company Ltd.	APPELLANT
Vs	
Gobind Singh and Others	RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Citation : (2015) 177 PLR 738 : (2015) 4 RCR(Civil) 657

Hon'ble Judges : Navita Singh, J

Bench : Single Bench

Advocate : Neeraj Khanna, Advocates for the Appellant; Dheeraj Narula, Advocates for the Respondent

Judgement

Navita Singh, J.—Learned counsel for the parties have been heard. This appeal has been filed by the Insurance Company against the award dated 16.7.2009 passed by Motor Accident Claims Tribunal (Tribunal for short), Sirsa, whereby the claimant-respondent No. 1 was awarded compensation to the tune of Rs. 1,33,541/- on account of injuries sustained by him in the accident on 11.7.2005.

2. The case of the claimant-respondent No. 1 before the Tribunal was that on 11.7.2005 at about 6.30 a.m., he along with his grand-father Patel Singh was coming from their fields situated at Jalalana Road to Odhan on foot and at that time they were going on the left side of the road on kutchra berm. When they reached about half km away from Odhan, one canter bearing No. RJ31G-1491 came from the side of Odhan, which was being driven by respondent No. 1 (respondent No. 2 herein) in a rash and negligent manner and struck against the claimant. Resultantly, left foot of the claimant came underneath tyre of the canter and got crushed badly. He also sustained injuries on his forehead, right feet and on other parts of the body. A criminal case was registered against the driver of the canter.

3. Respondents No. 1 and 2 (respondents No. 2 and 3 herein) by filing joint written statement raised certain preliminary objections regarding maintainability

and the vehicle being insured one. They denied that any accident which took place in the manner as alleged by the claimant.

4. Respondent No. 3-Insurance Company filed separate reply taking some preliminary pleas that there was collusion between the claimant and the respondents No. 1 and 2 i.e. driver and owner, that name of the driver had not been mentioned in the F.I.R., that no evidence had been collected by the police to link the driver with the accident in question and that at the time of accident, driver of the canter was not holding a valid and effective driving licence and lastly that the vehicle was not having any permit to ply the same in the jurisdiction of Harayana State. On merits, the pleas taken by the claimant were controverted.

5. The following issues were framed by the Tribunal:-

1. Whether the petitioner sustained injuries in this accident which took place on 11.7.2005 due to rash and negligent driving on the part of respondent No. 1 while driving canter bearing registration No. RJ31G-1491? OPP

2. Whether the claimant is entitled to any compensation, if so, from which respondent and to what extent? OPR

3. Whether the claim petition is not maintainable? OPR

4. Relief.

6. The short ground, on which the appeal has been filed by the Insurance Company without denying its initial liability, is that the appellant should be given a right to recover the amount of compensation from the insured who is respondent No. 3 herein. A specific objection had been taken before the Tribunal by the appellant that the driver of the vehicle, who was respondent No. 1 before the Tribunal, was not holding a valid driving licence at the time of accident. No separate issue, however, was framed by the Tribunal on that point.

7. Making a discussion about the validity of the driving licence under issue No. 3, the Tribunal held that the validity of the driving licence was upto 5.8.2004 whereafter it was renewed on 15.7.2005 till 14.7.2008. The holder of the licence had paid a penalty of Rs. 30/- and had got the renewal, meaning thereby that the driving licence was valid even on 11.7.2005 i.e. the date of accident. As per the argument of the counsel for the appellant, the Tribunal arrived at a wrong conclusion regarding the renewal of the licence with retrospective effect simply because payment of Rs. 30/- as penalty was made.

8. Learned counsel for respondent No. 1 did not offer any counter argument as the said respondent was claimant before the Tribunal and has already received the amount of compensation from the Insurance Company. Likewise, learned counsel for respondent No. 2, also did not argue as the right of recovery, if given to the appellant, would affect the insured i.e. respondent No. 3 herein. However, learned counsel for respondent No. 2 submitted that the Tribunal rightly held that

respondent No. 2 was holding a valid driving licence at the relevant time.

9. Learned counsel for the appellant referred to Ex. R1, which is copy of relevant driving licence, showing that it was first issued on 18.4.1994 for a period of three years and was then renewed upto 22.3.2001 on payment of penalty of Rs. 10/-. Then again it was renewed on payment of penalty from 6.8.2001 to 5.8.2004 and then after a gap of almost one year, renewal was made on 15.7.2005 upto 14.7.2008 on payment of penalty of Rs. 30/-. The document Ex. R1 shows that every time respondent No. 2 got the licence renewed much after the date of expiry by paying the penalty leviable at that time. He did not bother to get his licence renewed in time on any of the occasions. Simply payment of penalty would not mean that the licence remained valid throughout. Initially, it was issued on 18.4.1994 upto 17.4.1997 and it should have been got renewed latest by 16.4.1997, whereas by paying a penalty on Rs. 10/-, the licence holder got it renewed on 23.3.1998 and validity was upto 22.3.2001. Thereafter, there was gap of almost five months before it was renewed on 6.8.2001 upto 5.8.2004 and lastly after a gap of almost one year, it was got renewed on 15.7.2005 for three years.

10. If law of renewal would be construed that by paying the penalty renewal could be got made so as to cover the entire interregnum, nobody would bother to get the licence renewed for as much time as the holder may like to postpone it and then simply pay the penalty and get absolved of all responsibility for the intervening period. This surely could not have been the intention of law/rule makers. Payment of penalty was only a facility given to the licence holder for getting the licence renewed so that he/she may not be burdened with the liability of getting a new licence made, which would entail many formalities. This would not, by any stretch of imagination, mean that the validity would continue for the entire period behind for which the license holder did not bother to get it renewed. Thus, it would be taken that respondent No. 2 was not holding any valid driving licence on the date of accident i.e. 11.7.2005. In such event, the appellant would get a right to make recovery of amount of compensation paid by it, from the insured i.e. respondent No. 3. The appeal is allowed and it is held that the appellant shall have a right to recover, from the insured, the amount of compensation paid by the appellant.