(2001) 08 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2646 of 2001 (O and H)

United India Insurance Co. Ltd. APPELLANT

Vs

Kuldeep Singh and Others RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 170

Citation : (2002) 2 ACC 211 : (2002) ACJ 1820 : (2002) 1 RCR(Civil) 14

Hon'ble Judges : S.S. Sudhalkar, J;A.K. Goel, J

Bench : Division Bench

Advocate : R.K. Bashamboo, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—This appeal is filed by the Insurance Company against whom the learned Motor Accidents Claim Tribunal had passed the award to pay compensation to the claimant respondents.

2. Learned counsel for the appellant-Insurance Company argued that the Insurance company could not have been made liable and directing it to pay the amount because the respondent driver is not proved to have been driving with a valid driving license. He has further argued that the owner and the driver were called upon to produce the driving licence which they have not produced and hence the owner and driver only should have been made liable to pay the amount.

3. From the certified copy of the orders produced by the learned counsel for the appellant it can be found that two orders were passed in this connection i.e. order dated 22.1.2001 and 12/2.2001. The text of order dated 22.1.2001 is as under:-

"No RW is present. Counsel for the respondent insurance company moved an application u/s 170 MV Act. For reply to this application and for production of driving license of driver, to come tip on 12.2.2001."

The text of the order dated 12.2.2001 is as below:-

"Documents not filed. The ld. counsel for the respondents No. 1 and 2 requested for one more date. In the interest of justice case is adjourned to 22.2.01 for RWs. The application u/s 170 MV Act is allowed subject to just all expections."

Hence it is clear that it cannot be said that the Tribunal had directed the respondents to produce the driving licenced

4. Learned counsel for the appellants has relied on the case of Balbir Singh s/o Bahadur Singh (owner) Tractor v. Nikka Ram 2001 125 PLR 290. It is judgment of the Single Bench of this Court. It has been held by the learned Single Judge that when the Insurance company had requested the owner who contested the claim petition to produce driver but he did not do so and the driver did not care to contest the petition and when there was no licence in the criminal case, registered against the driver, the Insurance Company discharged its onus.

5. Learned counsel for the appellants has also cited the case of United India Insurance Co. Ltd. Vs. Gian Chand and others, in which it has been observed by the Supreme Court as under:-

"10. We fail to appreciate how the aforesaid decision can be of any avail to learned counsel for the respondents-claimants on the peculiar facts of the present case. It has been clearly held by the Tribunal as well as by the High Court that respondent No. 1, who was permitted to drive the vehicle by respondent No. 9, the insured, was admittedly not having any driving licence. It was not the case of respondent No. 9, the insured, that he did not know that respondent No. 1 whom the vehicle was being handed over was not having a valid licence. In fact, once he did not step in the witness box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, respondent No. 1. That finding reached by the Tribunal as well as by the High Court must result in exonerating the Insurance Company of its obligation as the statutory defence became available to it."

6. Firstly, we do not agree with the finding of the learned Single Judge in the case of Balbir Singh (Supra) that when the owner was required to produce the driver and he did not do so and the driver did not care to contest the petition and when there was no licence in the criminal case, registered against the driver, the Insurance Company can be discharged from its onus. We are guided in our view by decision of the Supreme court in the case of Narcinva V. Kamat and Anr. v. Alfred Antonio Doe Martins 1985 A.C.J. 397,in which it has been laid down that burden of proving that the driver of the vehicle was not holding a valid driving licence was on the insurance company. We further observe that such cases are not bipartite cases but are tripartite or multipartite cases and because the driver has not produced the driving licence, claimant and the owner cannot be made to suffer. The possession of the licence by law is required to be with the driver, without which he cannot drive (unless the licence is taken into possession by the

Police).

7. Therefore, the owner cannot be said to be in possession of the driver licence. The driver also cannot be said into the custody of the owner so that he can produce the driver. The facts in the case before the Supreme Court in the case of Gian Chand (supra) were quite different as can be seen from the portion of the judgment, quoted above.

8. In view of these reasons, we do not accept the submission of learned counsel for the appellant. We further observe that even if the orders of the tribunal quoted above, are held to mean that the driving licence was ordered to be produced, even then because of the above reasons, the Insurance Company cannot absolve itself from its liability.

9. No further ground has been argued.

10. In view of the above reasons, this appeal is without merit and is hereby dismissed.

Sd/- A.K. Goel, J.