(2011) ACJ 2123 : (2010) 159 PLR 612 : (2010) 2 RCR(Civil) 539

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 631 of 2009 (O and M)

Dinesh Kumar and Another		APPELLANT
	Vs	
Smt. Roshni Devi and Others		RESPONDENT

Date of Decision: Jan. 20, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (2011) ACJ 2123 : (2010) 159 PLR 612 : (2010) 2 RCR(Civil) 539

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.
This appeal by the owner and driver of the offending vehicle has been filed to challenge the impugned part of award, vide which rights have been given to the Insurance Co. to recover the awarded compensation, from the appellants by holding, that the Driver of the offending vehicle did not have a valid driving licence.

2. The claimant/respondents claimed compensation on account of death of Tejbir Singh son of Sh. Sukh Lal, in a motor vehicular accident, which took place on 17.9.2004, in the area of village Bastara within the jurisdiction of police station, Ghraunda.

3. Fact in details are not required to be gone into being not disputed.

4. In view of the pleadings of the parties, the learned Tribunal framed the following issues:

1. Whether the accident in question had taken place on 17.9.2004 in the area of police station Ghraunda, on account of rash and negligent driving of the car bearing registration No. HR-05K-5818 being driven by respondent No. 1 resulting into the death of Tejbir?

OPP

2. If issue No. 1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom? OPP

3. Whether the present petition is not maintainable in the present form? OPR

4. Whether the respondent No. 1 was not holding a valid and effective driving licence at the time of alleged accident? OPR3

5. Relief.

5. On appreciation of evidence, the learned Tribunal held, that the accident had occurred on 17.9.2004, in the area of police station Ghraunda, on account of rash and negligent driving of the car bearing registration No. HR-05K-5818, being driven by respondent No. 1, resulting into the death of Tejbir. On account of death, the learned Tribunal assessed the compensation payable to the claimants as Rs. 2,71,000/- (Rupees two lacs seventy one thousands only) along with interest and costs.

6. On issue No. 4, the learned Tribunal held, that respondent No. 1 was not holding a valid and effective driving licence at the time of alleged accident. In view of the finding recorded on issue No. 4, the recovery rights were given to the Insurance Company to recover the amount from the appellants after payment to the claimants.

7. The learned Counsel for the appellants challenged the impugned part of the award on the plea, that the finding of the learned Tribunal on issue No. 4 cannot be sustained, as respondent No. 1 was holding a valid driving licence at the time of accident.

8. Along with appeal an application under Order 41 Rule 27 of the CPC for additional evidence has been filed to place on record the driving licence of the applicant/appellant.

9. The stand taken in the application is that, the additional evidence to be produced, is necessary for the just and proper adjudication of the case. The application is supported by an affidavit. Even otherwise, a valid driving licence being material piece of evidence, is necessary for just and proper adjudication of the case, and is helpful to the court to effectively decide the dispute between the parties.

10. The C.M. is allowed and the driving licence Annexure P-1 is taken on record as Ex.P-1, by way of additional evidence.

11. The respondent/National Insurance Co. has also got the licence Annexure P-1, verified from the Licencing Authority, Panipat, and it has been reported, that respondent No. 1 was holding a valid driving licence. The copy of the verification report is taken on record as Ex.P-2.

12. In view of the fact, that the respondent No. I/Driver of the offending vehicle, had a valid driving licence, at the time of accident, the finding of the learned Tribunal on issue No. 4, cannot be sustained, and is accordingly reversed. It is held under issue No. 4 that respondent No. 1 held a valid driving licence on the date of accident.

13. Consequently, the appeal is allowed and the impugned part of the award granting the recovery rights to the Insurance Co. is set aside, and the liability to pay compensation is made joint and several, with no right of recovery to the Insurance Company.

No costs.