

(2014) 07 P&H CK 0244

High Court Of Punjab And Haryana At Chandigarh

Case No: CM No. 16958-CII of 2010 in/and RA-CR No. 123-CII of 2010 in FAO No. 4818 of 2009 (O&M)

New India Assurance Company
Ltd.

APPELLANT

Vs

Vikramjit

RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: Vinod Gupta, Advocate for the Appellant

Judgement

Rakesh Garg, J.

The insurance Company had filed the instant appeal i.e. FAO No. 4818 of 2009 challenging the Award of the Motor Accidents Claims Tribunal, Rupnagar dated 16.7.2009.

2. The said appeal was dismissed by this Court vide judgment dated 28.10.2009. The appellant filed SLP against the aforesaid order which was also dismissed. Hon"ble the Supreme Court passed the following order while dismissing the SLP on 26.3.2010:

Heard learned counsel for the petitioner On the facts of the case, we are not inclined to interfere with the impugned order The SLP is dismissed. However the petitioner is given liberty to file a review application in the High Court on the ground that certain points were pressed by it but they were not dealt with by the High Court."

3. The instant review application has been filed by the appellant-Insurance Company seeking review of the order dated 28.10.2009. The review application reads thus:

1. That the appellant/applicant had filed the FAO No. 4818 of 2009 in this Hon"ble Court and the same was came for hearing on 28.10.2009 and after hearing the arguments, the appeal filed by the appellants was dismissed.
2. That the present appeal was filed by the appellant on the following grounds:-
 - (a) That the driving licence of the offending vehicle was valid upto 4.1.2002 to 3.1.2005 and the same was renewed from 20.4.2005 to 19.4.2008 whereas the accident took place on 13.2.2005. Therefore, there was no driving licence on the date of accident.
 - (b) That it was a case of collusion as the FIR was lodged on the same date but there is no name of the driver or number of the vehicle in the FIR.
 - (c) That respondent No. 1 driver has pleaded that truck was parked on the road side and the driver of the motor cycle came rashly and negligently and struck against the front of the truck, therefore, he is not negligent.
 - (d) That the claimant is a major son of 25 years of old and his dependency can not be 2/3rd and multiplier applied by the Ld. Tribunal is on the higher side.
 - (e) That the application u/s. 170 of the Motor Vehicles Act filed by the appellant was allowed by the Ld. Tribunal vide order dated 1.5.2009.
3. That appellant filed the SLP before the Hon"ble Supreme Court on the ground that the arguments raised in the appeal on the ground of quantum, driving licence has not been properly dealt with as the application u/s. 170 of Motor Vehicles Act was allowed and driver was not having a licence on the day of accident and the other grounds as mentioned above.
4. That the above noted SLP came for hearing before Hon"ble Supreme Court on 26.3.2010 and after hearing the arguments, the same was dismissed but liberty was given to the appellant to file the review application in the Hon"ble High Court. Copy of the order dated 26.3.2010 is enclosed herewith as Annexure A-1.
5. That the above noted appeal was dismissed by this Hon"ble Court by holding that insurance company can not be challenged the quantum and negligence of the offending vehicle and appeal can be filed only on the limited ground but in the present case, application u/s. 170 of the Motor Vehicles Act was allowed and appellant has a right to challenge the quantum also.
6. That on the day of accident, there was no licence with the driver of the offending vehicle as it has already been expired, therefore, it can not be said that there was valid and effective driving licence at the time of accident.
7. That the compensation awarded by the Ld. Tribunal is on the very higher side because the claimant is a adult son and was not dependant on the income of the deceased and his dependency can not be 2/3rd of the income of the deceased and

multiplier is also on the higher side.

8. That it was a case of collusion as there is a no number of the vehicle and name of the driver mentioned in the FIR and the offending vehicle has later on been planted and the evidence of the respondent No. 1 driver has not been taken into consideration.

It is, therefore, respectfully prayed that present application may kindly be allowed and order dated 28.10.2009 may kindly be reviewed, in the interest of justice.

Note above mentioned grounds are sufficient to review the order dated 28.10.2009.

4. However, learned counsel for the review-petitioner has chosen to raise only two points before this Court to the effect that the driving licence of the driver of the offending vehicle was not valid on the date of accident and that the amount awarded to the claimants was on the higher side.

5. As per the application i.e. CM No. 16968-CII of 2010 filed along with this review petition, there is a delay of 159 days in filing this review petition.

6. At this stage, it may be noticed that an affidavit of Sh. K.B. Bindal, Manager, New India Assurance Co. Ltd., purported to be in support of this application has been placed on record. Counsel for the appellant states that the file was burnt and reconstructed. However, reconstructed copy could not be attested by him as true copy at some places including the affidavit of the Manager in support of the application.

7. Be that as it may, since the review petition is being decided on merits, the question of condoning the delay has become redundant.

8. At this stage, a perusal of the judgment dated 28.10.2009 would show that both the points with regard to validity of the driving licence of the driver of the offending vehicle as well as the right of the appellant Company to challenge the award on the ground of quantum were raised before the learned Single Judge, which were not accepted.

9. In view of the aforesaid fact, it cannot be said that while deciding this appeal vide judgment dated 28.10.2009, the points which were raised were not decided. It is a different thing that the points which were raised were not accepted and if the appellant-Insurance Company is aggrieved against the aforesaid order, it could have challenged the said order on merits before the appropriate forum. Moreover, its SLP has been dismissed by the Hon'ble the Supreme Court in this regard. Therefore, the grounds raised in the review petition that above said points were raised but not considered, is wholly incorrect.

10. There is no ground to review the order dated 28.10.2009.

11. Dismissed with costs which are assessed at Rs. 10,000/-. Costs be deposited by the appellant-Insurance Company within one month from today with the High Court Legal Services committee.