**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3561 of 2012 (O&M)
Date of Decision : 12.10.2015

Parveen Kumar and Anr.

..... Appellants

Versus

Sumitra Devi and ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Parminder Singh, Advocate
for the applicants/appellants.

Mr. Rakesh Bakshi, Advocate
for respondents No.1 to 4.

Mr. Manoj Dhiman, Advocate
for respondent No.7.

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K. KANNAN, J.

The claimants are entitled to recover the amount against the appellants since the stay has been specifically declined even earlier.

The only point falls for consideration is whether the Driving Licence produced by the driver was genuine to secure the benefit of a full indemnity from the insurer. At the trial, two licences were produced, one, said to have been secured by the police on the basis of which a verification and evidence was given and it revealed that it was fake. Yet another licence produced at the trial by the driver was with the verification that it was a genuine one. The Court rejected the licence verified to be genuine produced by the driver and preferred the verification obtained by the insurer as regards the licence secured by the police.

It is not clearly comprehensible as to how the same person possessed two sets of licences, one fake and another genuine. However, I reckon that the issue of breach of terms of policy invariably shall be cast on the insurer and hence, even if they had secured verification for copy of the licence produced by the police, they were bound to make verification and offer evidence against the licence produced by the driver at the time of the trial. It would appear that for damage to the vehicle, the Insurance Company had entertained an Own Damage claim from the owner which would not have been possible without verification about the genuineness of the licence of the driver. The Tribunal ought to have duly considered the effect of the satisfaction of the OD claim. The lack of evidence on the document brought by the driver that the licence produced at the time of the trial was not genuine by the Insurance Company by examination of any witness from DTO Office, ought to give place for an inference that the insurer did not discharge the onus of proving breach of policy terms.

In a situation of conflict of evidence between the two licences, the burden was heavy on the insurer to dislodge by appropriate evidence by examination of a witness from the DTO Office that the licence produced by the driver was not genuine. Such a course was not adopted.

While confirming the award assessing the amount as done by the Tribunal, I modify the issue of liability and cast the insurer as fully liable for the entire amount as assessed.

The right of recoveries for the claimants will avail against the insurer. The award stands modified as regards the liability and the appeal is allowed to the above extent.

It is stated that there is an appeal for enhancement. The appeal is not posted today. The decision must be taken as final only as regards the liability and the claimant's prayer for enhancement will be considered independently as and when the appeal comes for hearing.

(K. KANNAN)
JUDGE

12.10.2015
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