IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5203 of 2012 (O&M).
Date of Decision: 30.09.2015.

Oriental Insurance Company Limited ....Appellant.

VERSUS

Daljit Kaur and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vinod Chaudhary, Advocate for the appellant.

None for respondents No.1 to 4.

Respondents No.5 and 6 exparte vide order dated 04.02.2015.

Mr. Ashish Gupta, Advocate for respondent No.7.

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SNEH PRASHAR, J.

CM-23255-CII-2012

There is a delay of 17 days in filing the appeal. In view of the contents mentioned in the application, delay of 17 days in filing the appeal is condoned and the application is accordingly disposed of.

FAO-5203-2012 (O&M)

This appeal is by the Oriental Insurance Company Limited, with whom the Truck bearing registration No.PB-12F-8289 (hereinafter referred to as "the offending truck") was insured which was involved in the vehicular accident that took place on 14.03.2010 on Bassi Road, Sirhind and during which Ramaninder Singh alias Raju lost his life. The deceased was driving a scooter and the offending truck was parked on Bassi Road, near Gurpreet Padda Hospital, Sirhind. The indicators of the truck were off due to which Ramaninder Singh could not see the truck and his scooter rammed into the same from behind. As a result of accident, Ramaninder Singh sustained serious injuries which led to his death in the hospital. Respondents No.1 to 4 being legal heirs of the deceased filed a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 for grant of compensation which was partly allowed vide the award dated 12.04.2012. Learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, "the tribunal") held deceased Ramaninder Singh and respondent No.5, driver of the offending truck, equally responsible for occurrence of the accident. Accordingly, 50% amount out of the total amount i.e. Rs.8,40,000/- awarded was ordered to be deducted on account of contributory negligence on the part of the deceased and the claimants were held entitled to remaining 50% amount of compensation i.e. Rs.4,20,000/- alongwith interest at the rate of 7.5% from the date of award till actual payment. The appellant being insurer of the offending truck was directed to indemnify the insured and make payment of the award amount alongwith interest.

The grievance of the appellant-insurance company is that the driving licence Ex.R5 of Kulwant Singh (respondent No.5), who was driver of the offending truck at the relevant time i.e. at the time of accident, was valid for driving LTV, MTV and HTV for the period from 05.07.1996 to 04.07.1999 and thereafter on renewal for the period from 01.04.2010 to 31.03.2013. The accident took place on 14.03.2010 and apparently on that said date the driving licence of respondent No.5 was not valid and effective as it had expired long back. This amounted to the driver having no driving licence on the date of accident and from that it follows that there was violation of terms and conditions of the insurance policy by the insured and, therefore, the insurance company was not liable to pay compensation to the claimants.

The submissions made by Mr. Vinod Chaudhary, learned counsel representing the appellant and Mr. Ashish Gupta, learned counsel representing respondent No.7 have been considered.

Learned counsel for the appellant argued that the driving licence of the driver of the offending truck, issued on 05.07.1996, had expired on 04.07.1999. It was got lateron renewed w.e.f. 01.04.2010, however, the accident took place on 14.03.2010. Since much prior to the date of accident, the driving licence of respondent No.5 had expired, it would be taken as the driver had no driving licence on the date of accident. There being clear breach of terms and conditions of the insurance policy on part of the insured, the appellant-insurance company is not liable to indemnify the insured.

There appears to be no force in the argument of learned counsel for the appellant. Indeed, the driving licence Ex.R5 of driver of the offending truck had expired on 04.07.1999 and it was renewed w.e.f. 01.04.2010 i.e. after the accident had taken place on 14.03.2010, but the validity of the licence is irrelevant in the light of set of facts in hand. The insurer cannot be allowed to avoid its liability merely on technical breach of conditions concerning driving licence. In the instant case, the accident occurred due to wrong parking of the offending truck on the road where it ought not to have been parked. Learned tribunal rightly held that in the given set of facts deceased Ramaninder Singh appeared to be driving scooter at such a high speed that he was unable to control his vehicle from hitting the stationery truck. As such, composite negligence on part of the deceased and the driver of the offending truck (respondent No.5), who had wrongly parked the truck on the road, was held to have led to the occurrence of the accident. The said negligence on the part of respondent No.5 could not be related to his driving licence which was said to have expired prior to the date of accident.

In ***National Insurance Company Limited Vs. Swaran Singh, (2004) 3 S.C.C. 297*** the Hon'ble Supreme Court taking up the issue for consideration as to when an insurance company would be liable even if the driver did not have a driving licence, held that where the driving itself was not the cause of the accident, the insurer would still be liable even for deficient driving licence. Similarly, in ***National Insurance Company Limited Vs. Sushil Kumar and others, 111 (2006) A.C.C. 537*** when it was found that the driving licence had expired much before the date of accident but at the same time the facts indicated that non renewal of the licence did not contribute to cause of accident, it was held that the insurance company could not avoid its liability unless the breach was so fundamental as to have caused the accident.

In the instant case also, the parking of the vehicle at a place where it should not have been parked was the cause of accident and therefore, it can be conveniently be concluded that non renewal of the driving licence was not a breach so fundamental as to have caused the accident. More so, subsequently w.e.f. 01.04.2010 the driving licence of respondent No.5 was renewed.

Resultantly, the finding of learned tribunal that the insurance company is liable for payment of the compensation to the claimants to the extent of ratio of its liability assessed, calls for no intervention and the appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

30.09.2015.
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