IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5026-2013 (O&M)
Date of decision: 24.8.2015

Shri Ram General Insurance Company Limited
...Appellant

Versus

Hina and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Arun Sharma, Advocate for
Mr.TK Joshi, Advocate for the appellant

Mr.PK Kataria,Advocate for claimant-respondent No.1

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SNEH PRASHAR, J.

CM-21290-91-CII-2013

The present applications under Section 5 of the Limitation Act have been filed for condonation of delay of 84 days in re-filing and 90 days in filing the appeal.

Despite sufficient opportunity, no reply has been filed by the respondents.

For the reasons enumerated in the applications, the same are allowed. Delay of 84 days in re-filing and 90 days in filing the appeal is hereby condoned subject to all just exceptions.

FAO-5026-2013 (O&M)

The present appeal has been filed by the Insurance Company assailing the award dated 1812.2012 passed by learned Motor Accident Claims Tribunal, Jind (for short 'the Tribunal') vide which the claimants have been awarded their respective compensation and the Insurance Company has been held liable to indemnify the Insured.

The submissions made by learned counsel for the parties have been heard and record perused.

The only submission made by learned counsel for the appellant-Insurance Company is that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident, therefore, this being a breach of policy condition of the Insurance cover, the right to recover the amount from the owner and driver be given to the Insurance Company.

It is proved on record that the accident was caused by respondent No.1 driver of the offending truck bearing registration No.PB-29E-9665, in which Manjinder Kaur and Harish Chopra died, whereas Dheeraj, Simran and Hina sustained multiple injuries. In this regard FIR Ex.P29 was registered. Driver of the offending vehicle was facing trial in the criminal case.

Trial Court framed issue No.3 as under:-

> *"Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident."OPR*

The onus to prove the issue was securely on the Insurance Company but there appears no evidence to substantiate the objection raised by the Insurance Company.

Learned Tribunal while deciding this issue has observed as under:-

> "In this case, insurance company has failed to prove that respondent No.1 was holding a bogus licence. It was duty of Insurance Company to prove that at the time of alleged accident, respondent No.1 was not holding valid and effective driving licence at the time of alleged accident. But it failed to take any step in this regard. It could have got licence produced by summoning criminal case file where respondent No.1 is facing trial. But nothing has been done in this regard. So, respondent No.3 Insurance company is liable to pay compensation. Accordingly, issue No.2 and 3 are decided in

favour of the petitioners"

It appears that no application or notice was issued by the Insurance Company calling upon the driver and owner to appear and produce the driving licence. Even when the driver was proceeded against ex-parte, the Insurance Company could have got him summoned for producing his driving licence. In absence of any step taken by the Insurance Company to discharge the onus on it, no such assumption can be raised that he did not possess a valid and effective driving licence.

In the above premises, the present appeal fails and is hereby dismissed being devoid of any merit.

24.8.2015 **(SNEH PRASHAR)**
gsv **JUDGE**