IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5293 of 2013 (O&M).
Date of Decision: 01.09.2015.

Oriental Insurance Company Limited ....Appellant.

VERSUS

Parkash Kaur and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Lalit Garg, Advocate for the appellant.

Mr. Harish Sharma, Advocate for respondents No.1 to 4.

None for respondent No.5.

Respondents No.6 and 7 were proceeded against exparte vide order dated 25.11.2014.

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SNEH PRASHAR, J.

CM-22586-CII-2013

There is 2 days delay in filing the appeal. In view of the contents mentioned in the application, delay of 2 days in filing the appeal is condoned and the application stands disposed of.

FAO-5293-2013

This appeal was filed by the appellant-Insurance Company assailing the award dated 01.08.2013 passed by Motor Accident Claims Tribunal, Chandigarh (for short, "the tribunal") in MACT case No.74 of 2008 titled "Parkash Kaur and others vs. Pardeep Kumar and others" awarding compensation to the tune of Rs.20,66,360/- alongwith interest @ 7.5% per annum from the date of petition till payment to respondents No.1 to 4-claimants and fastening liability of payment of the award amount on the appellant-insurer and respondents No.5 and 7 (driver and owner) of the Mini Truck No.PB-12B-7634 (hereinafter referred to as "the offending truck")

The submissions made by Mr. Lalit Garg, learned counsel representing the appellant and Mr. Harish Sharma, learned counsel representing respondents No.1 to 4 have been considered.

The contention of learned counsel for the appellant-insurance company is that in the written statement, filed in the claim petition before the tribunal contesting the claim petition, he had raised a specific objection that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident and that the vehicle was being plied in violation of the terms and conditions of the insurance policy. On his objection, the tribunal framed issue no.3, the onus of which was placed on the insurance company, but ultimately the said issue was decided against the insurance company.

Learned counsel contended that the driver and owners of the offending truck, despite notice of the petition, did not appear to contest the same and were proceeded against exparte. During evidence, the insurance company tendered in evidence Ex.RA the final report submitted by the police prepared under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") after investigation. A bare perusal of the report shows that the driver of the offending truck was challaned under Section 279, 337, 338 and 427 of the Indian Penal Code (for short, "I.P.C.") and Section 3/181 of the Motor Vehicles Act, 1988 (for short, "M.V. Act"). He was challaned under Section 3/181 of the M.V. Act because it was found that the driver had no driving licence at the time of accident and during investigation also he could not produce any driving licence. As such, from the document Ex.RA, it stood established that the driver had no driving licence what to say a valid and effective and that amounted to violation of terms and conditions of the policy during use of the offending truck.

Learned counsel contended that the tribunal altogether ignored the document Ex.RA and did not discuss about the same while deciding issue No.3 and therefore, the liability of payment of compensation amount was wrongly imposed on the insurance company (appellant).

The argument of learned counsel for the appellant may appear to be attractive but has no force. Admittedly, the onus to prove issue No.3 framed by the tribunal on the objection of respondent No.3-insurance company that respondent No.1 was not holding a valid and effective driving licence on the date of accident, was on the insurance company. No substantive evidence was led by the insurance company to discharge the onus. The document Ex.RA i.e. final report submitted by the police after investigation in the case registered in respect of the accident was of no help.

Even if it is accepted in the light of the document that the driver of the offending truck was challaned under Section 3/181 of the M.V. Act, that by itself cannot lead to the conclusion that the driver, who was impleaded as respondent No.1 in the claim petition, had no driving licence. Nothing was produced by the insurance company to prove the fate of the challan. For the mere reason that the driver was challaned was not enough to conclude that the driver had no driving licence or his licence was not valid and effective. There is nothing to prove the charge levelled by the police against the respondent-driver. The driver and owner of the offending truck may have been proceeded against exparte during the trial of the petition but the insurance company had the remedy under the law of calling upon them to produce the licence which was in their possession or it should have been led some other substantive and reliable evidence to prove its objection.

Since the appellant insurance company had failed to discharge the onus of issue No.3 by proving its objection, learned trial Court rightly held the said company as liable for payment of the compensation amount. Thus, finding no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

01.09.2015.
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