IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 554 of 2014 (O&M)
Date of Decision:- 13.05.2015

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Kuldeep and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Amit Jaiswal, Advocate
for the appellant.

Respondent No.1 ex parte.

Service of respondent Nos.2 and 3 dispensed with.

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SHEKHER DHAWAN, J.

Appellant-claimant is in appeal against the award dated 31.08.2013, passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' has awarded compensation of ₹1,63,000/-.

2. Relevant facts for the purpose of decision of the present appeal that motor vehicle accident took place on 19.02.2009 at about

12.30 (mid night) involving Maruti Van bearing registration No. HR-55F-2151 and offending truck bearing registration No.HR-38G-3266. The said accident resulted into grievous injuries to claimant, who was shifted to Mamta Hospital, Gurgaon, by some passerby. The matter was reported to the police. Respondents contested the claim petition and 'The Tribunal' after appreciating the evidence available on file awarded compensation of ₹1,63,000/-.

3. Mr. Amit Jaiswal, learned counsel for appellant-insurance company took the plea that 'The Tribunal' fell in error while awarding the amount of compensation and fixing the liability of appellant-insurance company and also to make the payment of compensation and at the first instance to make the payment and thereafter to recover the same from the owner. As per learned counsel for appellant, respondent No.1, driver of the offending vehicle had not produced any driving licence. As per RW2 Kuldeep he was having driving licence Ex.PW-4/C, which was issued on 14.09.2007 from Licencing Authority, Mathura and 'The Tribunal' has already returned finding that insurance company is liable to make the payment at the first instance and the said findings are liable to be reversed as Kuldeep was not having any valid licence on the date of accident as proved on record.

4. Having considered the contentions raised by learned counsel for the appellant-insurance company, this Court is of the considered view that 'The Tribunal' had recorded the statement of RW1 Abhey Sahai Saxena, Clerk from ARTO, Office Mathura, who made statement on the

basis of record relating to driving licence No.13074, which was issued on 14.09.2007. However, the said driving licence was in the name of Ramesh Chand son of Rajbir Singh resident of Gacholi, District Mathura and the said driving licnece was valid from 14.09.2007 to 13.04.2024. The said driving licence was valid for light motor vehicle and two wheeler and copy of driving licence was Ex.R1. This witness has specifically mentioned that driving licence No.13074 was not issued in the name of Kuldeep son of Mohkam.

5. On the basis of Statement of RW1 coupled with statement of Kuldeep son of Mohkam Singh RW2 (driver of the offending vehicle), Kuldeep Singh was not issued driving licence No.13074/M-07 (Ex.PW4/C). Rather the said driving licence No.13074 was issued in the name of Ramesh Chand son of Rajbir Singh. Kuldeep was driving the offending vehicle without any driving licence on the date of accident and as such it was a complete case of violation of insurance policy and insurance company is not liable to make the payment of any compensation amount. 'The Tribunal' fell in error while returning said findings and the same are hereby reversed.

6. Resultantly, the present appeal accepted and the award dated 31.08.2013, passed by 'The Tribunal' stands modified. The liability to pay the amount of compensation shall be of Kuldeep (driver of the offending vehicle) and Rattan Singh (owner of offending vehicle), whereas the insurance company is not liable to make the payment of any compensation. If the said payment has already been made to the claimant,

the insurance company shall be entitled to recover the same from the claimant along with interest @ 7.5% from the date of payment till receipt from the owner of offending vehicle.

(SHEKHER DHAWAN)
JUDGE

May 13, 2015
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