IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O No. 6977 of 2014
Date of decision:- 20.10.2015

Shri Ram General Insurance Co. Ltd. ...Appellant

Versus

Sanjay Sharma and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant

RITU BAHRI J.

C.M. No. 18852 & 18851 of 2014

For the reasons mentioned in the application, delay of 108 days in filing and 5 days in re-filing of the present appeal is condoned.

The applications stand disposed of accordingly.

F.A.O No. 6977 of 2014

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Patiala (for brevity, the tribunal'), vide its award/order dated 16.12.2013 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.1,03,000/- on account of damage to the vehicle of the claimant.

Facts not in dispute

2. On 12.03.2011, Mukesh Sharma son of respondent No. 1 was driving the vehicle No.HR-10-L-8999 at a moderate speed and when he was crossing the chowk at green signal of Ganesh Nagar, P.S. Tilak Nagar, Delhi, a vehicle bearing registration No. DL 1YA 5162 came in a rash and negligent manner struck in the car of respondent No. 1 and caused the accident. The vehicle remained under repairing for about 25 days. The said vehicle was insured with the appellant-Company. Despite service, respondent Nos. 1 and 2 did not appear before the Tribunal and they were proceeded ex parte on 17.04.2013.

The learned Tribunal after going through the entire evidence held that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle by relying upon the deposition of Mukesh Kumar-Eye witness as P.W.2 and P.W.3-claimant. Issue No. 1 was decided in favour of the claimant. Apart from the deposition of P.W.2 and P.W.3, DDR was also registered in this regard. Further, the claimant was awarded compensation of Rs.1,03,000/- as his vehicle was delivered after repair on 31.03.2011 after charging Rs.1,03,033/-. Since vehicle was insured with the appellant-Company, respondent Nos. 1, 2 and 3 were jointly and severally held liable to pay the amount of compensation to the claimant.

Learned counsel for the appellant has argued that since the driver of the offending was not holding a valid and effective driving licence, the Insurance Company be given recovery rights.

This argument of learned counsel is liable to be rejected as held by the Tribunal in para No. 16 of its award wherein Tribunal relied upon a judgment of Hon'ble the Supreme Court in a case of ***National Insurance Company Ltd. v. Swaran Singh and others 2004 ACC 1 (SC)*** wherein it has been held that the breach of policy condition e.g. Disqualification of driver or invalid driving licence of the driver, as contained in sub section 2(a)(ii) of Section 149 have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties.

The onus was on the Insurance Company and they should have summon respondent No. 1 and 2 to prove its case, which have not been done.

In view of the above, the findings of the learned tribunal does not require any interference by this Court.

The appeal stands dismissed.

20.10.2015 (***RITU BAHRI***)

G Arora ***JUDGE***