IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5510 of 2015(O&M)

Date of Decision: August 24 , 2015.

Oriental Insurance Company Ltd. ...... APPELLANT (s)

Versus

Harjit Kaur and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.C.Gupta, Advocate
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

Instant appeal has been preferred by the Oriental Insurance Company Ltd. challenging the award dated 20.05.2015 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as, the 'Tribunal').

Brief facts of the case are that, respondents No.1 to 5 – claimants preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') claiming compensation to the tune of ₹10 lacs on account of death of Daljit Singh in the motor vehicular accident which took place on 29.09.2007. Claimants are widow, minor children and parents of the deceased.

Deceased – Daljit Singh was driving truck bearing registration No.

HR-37A-8452 and was proceeding from Lokhra NH 37 Service Road towards Jalukbari side on 29.04.2007. At about 6.30 a.m. when he reached at Lokhra Brariali road divider, another truck bearing registration No. AS-01-U-2171 driven by respondent No.6 – Mantu Kumar Yadav in a rash and negligent manner without blowing any horn came towards Jalukbari side and dashed against the truck driven by Daljit Singh (deceased). Daljit Singh received fatal injuries and died at the spot. FIR No.238 of 2007, under Sections 279/304A/427 IPC, Ex.P2/1 was recorded on the basis of statement of Jaswinder, who was travelling in truck No.HR37A-8452 alongwith Daljit Singh.

Claim petition was contested by the appellant – Insurance Company while averring that respondent No.6 – Mantu Kumar Yadav was not holding an effective and valid driving licence. There is fundamental breach of the terms and conditions of the insurance policy therefore, the Insurance Company was not liable. Insurer of Truck No.HR-37A-8452 also contested the petition claiming that the accident took place solely due to rash and negligent driving of respondent No.6 – Mantu Kumar Yadav, driver of vehicle bearing registration No.AS-01-U-2171. Following issues were framed by the Tribunal:-

> "*1- Whether deceased Daljit Singh died in a Motor Vehicular Accident caused by respondent No.1 while driving Truck No. AS-01-U-2171 rashly and negligently?OPA*
>
> *2- Whether the claimants were dependent on the deceased, being legal heirs of deceased and are entitled to compensation, if so, from whom and to what amount?OPA*
>
> *3- Whether the present claim petition is bad for mis-joinder of*

parties?OPR

4- Whether the driver of offending vehicle bearing No. AS 01 U 2171 namely Mantu Kumar Yadav, respondent No.1 did not hold valid and effective driving license at the time of alleged accident?OPD(3)

5- Whether the offending vehicle bearing No. AS-01-U 2171 did not have the valid registration certificate, route permit and fitness certificate at the time of alleged accident? OPD(3)

6- Relief."

Learned Tribunal on appreciation of the facts and circumstances as well as evidence on record concluded that the accident had taken place solely on account of rash and negligent driving of Truck No.AS-01-U-2171 by respondent No.6 – Mantu Kumar Yadav.

Total compensation of ₹7,50,000/- was awarded to respondents No.1 to 5 – claimants as detailed below:-

1) Loss of dependency	-	₹6,75,000/-
2) Funeral charges	-	₹25,000/-
3) Loss of consortium	-	₹50,000/-

Owner and driver of the offending vehicle No.AS-01-U-2171 were proceeded against *ex parte*.

The Tribunal while deciding Issues No.4 and 5, held that neither copy of the driving licence of respondent No.6 – Mantu Kumar Yadav nor any Registration Certificate, route permit or fitness certificate has been produced therefore, it can be inferred that the offending vehicle was driven without valid documents. Learned Tribunal while awarding compensation held that appellant – Insurance Company shall meet the liability for making the payment of compensation as it had agreed to indemnify the insured against all third party claims. Right of recovery would be available to the Insurance Company.

Aggrieved primarily from the finding of the Tribunal fixing liability of the appellant – Insurance Company to make the payment of compensation, present appeal has been preferred. Quantum of compensation is not subjected to any serious challenge.

Learned counsel for the appellant submits that owner and driver of the case did not even bother to come forward and contest the case. They were proceeded against *ex parte*. No driving licence, Registration Certificate, Permit, Fitness Certificate, route permit etc. have been place on record by the owner or driver of the offending vehicle. Therefore, in these circumstances, it should be inferred that there is a fundamental and deliberate breach of terms and conditions of the insurance policy, therefore, appellant – Insurance company should be completely exonerated from any kind of liability.

I have heard learned counsel for the appellant and do not find any merit in the argument so raised.

It has been held by Hon'ble Supreme Court in **National Insurance Company Ltd. v. Swaran Singh and others**, ***2004(2) RCR (Civil) 114*** that where the Insurance Company has agreed to indemnify the insured against all third party claims, it is liable to make good the compensation but would be free to recover the same from the owner and driver. Insurance of the alleged vehicle is not disputed. Insurance Company has been unable to prove any breach of the terms and conditions of the policy. It was incumbent for the Insurance Company to have proved the breach. Owner and driver having been proceeded against *ex parte* cannot be a ground to exonerate the appellant from its liability to indemnify. Right to recover the amount so paid has been rightly afforded to the appellant.

Consequently, there is no illegality, infirmity or perversity in the finding recorded by the Tribunal vide impugned award dated 20.05.2015 which warrants interference by this Court.

This appeal is accordingly dismissed.

(LISA GILL)
JUDGE

August 24 , 2015.
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