IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 5975 of 2011
Date of decision: 08.12.2016

ICICI Lombard General Insurance Company Limited........Appellant

Versus

Paramjeet and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Mrigank Sharma,Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 25.05.2011 passed by the Motor Accidents Claims Tribunal, Hisar (in short, 'the Tribunal') whereby compensation has been awarded in favour of Paramjeet and others in regard to death of Satbir in a motor vehicular accident that took place on 17.04.2009.

The sole submission made by counsel for the appellant is that the insurance company issued a legal notice (Ex.R3) calling upon the insured to supply copies of documents including that of driving licence but the insured did not respond to legal notice. It is further submitted that a copy of the legal notice and postal receipt have been marked as exhibits. It is argued with vehemence that as the insured failed to supply copies of documents more particularly the driving licence, there was no occasion with the insurance company to seek necessary verification in regard to its validity or otherwise. The last submission made by counsel is that as the insured failed to produce driving licence, an adverse inference is to be raised that driver did not possess driving licence, therefore, the appellant is entitled to be given right of recovery after satisfying the award qua the claimants.

I have heard counsel for the appellant and perused the paper book particularly the award.

The Tribunal framed issue No. 4, reads thus:-

> *'4. whether the driver of the offending vehicle was not holding a driving licence at the time of accident?OPR.'*

This issue was determined against the insurance company with the observations, quoted thus:-

> *'The tractor in question was being driven by deceased Satbir Singh. However, respondent No. 4 has not given any notice to the petitioners who are legal heirs of deceased Satbir Singh or respondent No. 3 to give any particular of driving licence of Satbir Singh rather notice has been issued to respondents No. 1 and 2. Therefore, no inference can be drawn that deceased Satbir Singh was not holding any driving licence to drive the tractor in question.'*

Counsel for the appellant has not disputed the factual findings recorded by the tribunal that no notice was issued nor the claimants (legal heirs of deceased Satbir) were called upon to produce driving licence of Satbir. This apart, failure of the insured to respond to any legal notice or comply with the provisions of Section 134 of the Motor Vehicles Act, 1988 (in short, the Act) would not constitute a defence available to the insurer under Section 149(2) of the Act. There is nothing on record suggestive of the fact that the appellant tried to examine the insured for seeking production of driving licence during course of proceedings before the

Tribunal. In this view of the matter, no adverse inference can be drawn against the insured to uphold plea of the appellant that Satbir was not holding a driving licence to drive the tractor in question. That being so, no error much less illegality can be noticed in the findings of the Tribunal whereby issue No. 4 has been answered against the insurance company.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

08.12.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No