IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.5402 of 2012
Date of decision : 12.02.2016

The Oriental Insurance Company Ltd.

......Appellant

Versus

Mukesh Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

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

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DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 12.04.2012, passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the 'Tribunal'), vide which the claim petition filed by claimant-respondent No.1 for grant of compensation on account of the injuries suffered by him in the motor vehicular accident which took place on 10.10.2007 has been allowed and he has been awarded the compensation to the tune of Rs.1,69,000/- along with interest @ 6% per annum from the date of filing the petition till realization of the entire amount.

2. The appellant-Insurance Company and respondents No.2 & 3 were held jointly and severally liable for payment of the award of compensation.

3. The present appeal has been preferred by appellant-respondent No.3-Insurance-Company to challenge its liability to pay the amount of compensation.

4. Learned counsel for the appellant-Insurance Company contended that respondents No.2 & 3 were proceeded against *ex parte* before the learned Tribunal, so they have not produced any driving licence to show that the driver of the vehicle was having the valid driving licence on the date of the accident. So, the Insurance Company cannot be held liable to pay the amount of compensation.

5. I have duly considered the aforesaid contentions, but I do not find any substance in the contentions raised by learned counsel for the appellant.

6. No doubt respondents No.2 & 3 *i.e.* the driver and owner, respectively, were proceeded against *ex parte* by the learned Tribunal but still the onus is on the appellant-Insurance Company to establish that the insured has violated the terms and conditions of the insurance policy. The learned Tribunal has framed issue No.3 as under:-

> *"Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR-3"*

This issue has been decided in following terms:-

> *"The onus to prove this issue was upon the Insurance Company-respondent No.3. However, no evidence has been*

led on behalf of the Insurance Company to prove this issue. Therefore, this issue is decided against the respondents."

7. The aforesaid findings of the learned Tribunal shows that the appellant Insurance-Company has not led any evidence to discharge its burden to establish that the driver of the vehicle was not holding any valid driving licence at the time of the accident.

8. Consequently, the appellant-Insurance Company has utterly failed to establish that the insured has violated the terms and conditions of the insurance policy. Mere this fact that the driver and owner had failed to contest the claim petition and were proceeded against *ex parte* will not automatically establish the violation of the terms and conditions of the insurance policy.

9. Consequently the appellant-Insurance Company cannot escape the liability.

10. Thus, keeping in view my aforesaid discussion, the present appeal is without any merits and same is hereby dismissed.

12.02.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**