

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO 1895 of 2013 (O&M)
Date of decision: 12.12.2016

Chand Ram and another

..... Appellants

Versus

Dheeraj and another

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants

Mr. Rajneesh Malhotra, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

The driver and owner/insured of offending vehicle i.e. Canter TATA 709 bearing No. HR-64-2647 are in appeal to assail findings of the Tribunal qua issue No.3 on the basis whereof United India Insurance Company Limited (in short, 'the insurance company') has been exonerated of its liability to pay compensation.

Counsel for the appellants would submit that the learned Tribunal decided issue No. 3 on the basis of testimony of Abhey Sahai Saxena, Junior Assistant (RW1) from the office of Licencing Authority, Mathura and the witness has testified with regard to licence bearing No. S-254/99 by stating that said series were there in the year 1995 and on this number, licence had been issued by A.R.T.O. Mathura in the name of Fateh

Singh son Bhup Singh. It is argued that as a matter of fact, licence possessed by Chand Ram son of Mange Ram bears no. S 2254/MTR/99. The Tribunal has wrongly relied upon testimony of Abhey Sahai Saxena, Junior Assistant (RW1) to record a finding in favour of the insurance Company. It is prayed that findings of the Tribunal on issue No. 3 may be set aside and the matter is remitted to the Tribunal for decision qua issue No. 3 afresh after permitting the parties to adduce evidence.

Counsel for the insurance Company, on the contrary, has submitted that after noticing that there was some discrepancy in the particulars of the licence allegedly possessed by respondent No. 1 Chand Ram viz-a-viz the facts deposed by Abhey Sahai Saxena, Junior Assistant (RW1) pertaining to licence bearing No. S-254/99, the insurance Company made necessary verification qua driving licence No. S-2254/MTR/99 and as per said verification report dated 16.03.2015 placed on record, licence in question was not issued to Chand Ram son of Mange Ram.

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

Be that as it may, the Tribunal has recorded its finding qua issue No. 3 on the basis of testimony of Abhey Sahai Saxena, Junior Assistant (RW1) who had deposed with regard to Licence bearing No. S-254/99 whereas correct particulars of the licence stated to be possessed by Chand Ram son of Mange Ram are S-2254/MTR/99, purported to be issued from the office of A.R.T.O., Mathura. Any such verification report received by the insurance company during pendency of the present appeal was not subject to scrutiny by the Court by examining a witness from the said

licencing authority and providing an opportunity to the appellants to challenge its correctness and authenticity. That being so, the findings recorded by the Tribunal on issue No. 3 cannot be allowed to sustain and accordingly set aside. The matter is remitted to the Tribunal for decision on issue No. 3 afresh after allowing an opportunity to the insurance company to adduce relevant evidence with regard to genuineness and validity of driving licence bearing No. S-2254/MTR/99 and thereafter an opportunity to the appellants to rebut evidence adduced by the insurance company. The insurance company and the appellants shall be entitled to two effective opportunities each for adducing evidence.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The matter is remitted to the Tribunal for decision on issue No. 3 afresh. Parties through their counsel are directed to appear before the Tribunal on 12.01.2017.

(Rekha Mittal)
Judge

12.12.2016
mohan bimbira

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