IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 1163 of 2014 (O&M)
Date of decision: 18.07.2016

National Insurance Company Limited .... *Appellant*

Versus

Danish and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: None for the appellant

Appeal stands dismissed qua respondent No. 1

Respondents No. 2 and 3 already ex parte.

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

Rekha Mittal, J.

The present appeal has been directed against the award dated 14.11.2013 passed by the Motor Accident Claims Tribunal, Amritsar (in short, 'the Tribunal') whereby compensation has been granted in favour of Danish-respondent No. 1 for sustaining injuries in a motor vehicular accident that occurred on 07.08.2012 due to rash and negligent driving of truck trailer bearing registration No. PB -03-X-3043 by its driver namely Mukhtiar Singh.

Arguments were heard on the last date of hearing.

The sole submission made by counsel for the appellant (insurance company) is that the learned Tribunal has committed a gross error rather illegality in recording findings on issues No. 5 and 6 (wrongly typed as issues No. 4 and 5) and, thus, fastening liability upon the appellant on the basis of insurance policy Ex PA. To substantiate her contention, she raised two fold submissions. The first submission made by counsel is that as driving licence possessed by Mukhtiar Singh was not extended beyond 25.05.2011, driver was not holding a valid driving licence on the date of accident i.e. 07.08.2012. Another submission made by counsel is that as owner of offending vehicle did not possess a permit, the insured is guilty of violating terms and conditions of insurance policy, thus, exonerating the insurer of its liability to indemnify the insured. In the alternative, it is argued that even if the appellant is held liable to satisfy the award passed in favour of the claimant (victim), the insurance company should be given recovery rights against owner of the offending vehicle.

I have perused the paper book particularly the award passed by the learned Tribunal.

The Tribunal framed issues No. 5 and 6, reproduced herein under, onus whereof was laid upon respondent No. 3 (appellant herein):-

> *5)whether respondent No.1 Mukhtiar Singh was not having a legal and valid driving licence at the time of accident, if so, its effect? OPR 3*
> *6)whether respondent No. 2, insured, violated terms and conditions of insurance policy, if so, its effect? OPR-3.*

The appellant produced report Ex.R-1 purported to be obtained from District Transport Office, Tarn Taran, indicating that licence possessed by the driver was valid upto 25.05.2011. The learned Tribunal has held that as the appellant did not summon the records from the office which issued driving licence in favour of Mukhtiar Singh, tendering of report (Ex R1) is not sufficient to discharge the onus by the insurer that the driver was not holding a valid licence at the time of occurrence. Counsel for the appellant has not disputed correctness of the factual findings recorded by the tribunal.

As the appellant did not examine an official from the office of District Transport, the owner of the vehicle has been deprived of an opportunity to challenge correctness of the report Ex R1. Counsel for the appellant is not in a position to convince the Court that said report is *per se* admissible. In absence of the appellant having satisfactorily discharged onus of issue No. 5 that driver of the offending vehicle was not holding a valid licence on the date of accident, no fault much less illegality can be noticed in the findings of the learned Tribunal in regard to issue No. 5.

This bring the Court to the findings on issue No. 6. The appellant (respondent No. 3) filed the written statement and it appears that a plea was raised that respondent No. 2 (owner) has violated terms and conditions of insurance policy, thus, absolving the insurance company of its liability to pay compensation. Counsel for the appellant has not placed on record a copy of the written statement in order to point out if a specific plea was raised that owner of the truck did not possess a permit to ply the vehicle. There is nothing on record suggestive of the fact that owner of the offending vehicle was ever called upon by the insurance company to produce a copy of the permit. It further appears that no specific argument was advanced before the Tribunal that owner of the truck did not possess a permit to ply the vehicle. In absence of positive evidence having been led by the appellant that owner was plying the vehicle without any permit, the learned Tribunal has rightly discarded plea of the appellant that the insured has violated any of the terms and conditions of the contract of insurance.

In this view of the matter, I find myself unable to accept arguments raised on behalf of the appellant. that the findings recorded by the learned Tribunal on issues No. 5 and 6 are erroneous warranting intervention.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

18.07.2016
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