

FAO No. 1653 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

FAO No. 1653 of 2014(O&M)

Date of Decision:6.9.2016

Jaipal Singh

---Appellant

vs.

Meena Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munish Mittal, Advocate
for the appellant

Mr. R.S.Mamli, Advocate
for respondent Nos. 1 and 2

Mr. Punit Jain, Advocate
for Mr. M.B.Jain, Advocate
for respondent No. 3

Rekha Mittal, J.

Jaipal Singh, driver and owner of truck No. HR-63-5281
(hereinafter to be referred as “the offending vehicle”) is in appeal against

the award dated 9.12.2013 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari (in short “the Tribunal”) whereby compensation has been awarded in favour of the claimants/respondents qua death of Diksha @ Anjali.

The sole submission made by counsel for the appellant is that due to some mistake, number of driving licence of the appellant as 12614/M/07 in place of correct No. 12414/MTR/07 was mentioned and for that reason report Ex. R-4 was prepared by the concerned transport authority at Mathura that driving licence No. 12614 had not been issued by the said office. It is argued that as per correct particulars of driving licence held by the appellant, same was issued by the authority under whose signature and seal, the driving licence was issued to the appellant on 3.9.2007 and valid upto 15.5.2015/24.10.2016.

Counsel for the insurance company has not disputed that as per verification made by the insurer from the concerned licensing authority at Mathura, driving licence No. 12414/MTR/07 was issued by the said authority to appellant Jaipal Singh. However, it has been submitted that as Jaipal Singh is a resident of Gharonda, District Karnal, it is not clear on

record as to how he could submit an application for issuance of driving licence to the authority at Mathura as Section 8 of the Motor Vehicles Act, 1988 (in short “the Act”) clearly provides that any person who is not disqualified under Section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of Section 7, apply to the licensing authority having jurisdiction in the area (i) in which he ordinarily resides or carries on business. According to counsel, the driving licence No. 12414 would also not suffice to modify the award giving recovery right to the insurer on account of violation of policy in regard to a valid driving licence.

I have heard counsel for the parties, perused the paper book particularly the award passed by the Tribunal.

There cannot be any quarrel with the settled position in law that if the insurance company wants to avoid its liability to pay compensation in view of the defences available under Section 149(2) of the Act, it is enjoined upon the insurer to plead and prove violation of a condition envisaged under the said provision. Indisputably, the licence held by the appellant bearing No. 12414/MTR/07 has been verified to be issued

by the licensing authority at Mathura. Counsel for the respondent has failed to invite my attention to any such fact brought on record either by way of pleadings or evidence that Jaipal Singh was not competent to submit an application to the licensing authority at Mathura as he is residing in village Gharonda as per his address given in the claim petition filed in the year 2011. In absence of the insurance company having raised such a plea, no such factual controversy can be entertained much less accepted without giving an opportunity to the appellant to explain his position as to under what circumstances, he submitted an application to the licensing authority at Mathura for obtaining a driving licence in the year 2007. That being so, the respondent cannot derive any advantage to its contention by invoking the provisions of Section 8 of the Act for the first time before the appellate court.

As the appellant was holding a valid driving licence at the time of occurrence, the findings recorded by the learned Tribunal that the insured is guilty of violating the terms and conditions of policy or the insurance company is entitled to recover the amount of compensation from the owner cum driver of the vehicle cannot be allowed to sustain and accordingly set

aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

6.9.2016
paramjit

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No