IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:16.8.2016

1. **FAO No.336 of 2013(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Sunita and others .....Respondents

Present: Mr. Gopal Mittal, Advocate for the appellant.

Mr. Aman Priya Jain, Advocate for respondents No.1 to 5.

None for respondent No.5-A and 6.

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2. **FAO No.2369 of 2013(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Syed Mehboob Ali and others .....Respondents

Present: Mr. Gopal Mittal, Advocate for the appellant.

Mr. Aman Priya Jain, Advocate for respondents No.1 and 2.

None for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.336 and 2369 of 2013 as identical questions of law and facts are involved for adjudication. However, for the sake of convenience, facts are taken from FAO No.336 of 2013.

The sole question that calls for determination is whether the driver of offending vehicle (Car No.DL-1YB-2565) was not holding a valid driving licence at the time of occurrence resulting in breach of terms and conditions of the Insurance Policy, if so its effect?

Counsel for the appellant has submitted that as the vehicle in question was being plied as a taxi and the driver did not possess a licence to drive a commercial/transport vehicle or in other words he was authorized to drive only LTV (N.T.) i.e. Light Motor Vehicle – Non Transport, the insured is guilty of breach of the terms and conditions of contract of insurance, therefore, the appellant is entitled to have recovery rights against the insured after payment of compensation to the claimants. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court National Insurance Co. Ltd. Vs. Kusum Rai and others, (2006) 2 SCC (Criminal) 214. It is further argued that though the learned Tribunal has accepted that the vehicle in question was a taxi and the driver possessed driving licence to drive a Light Motor Vehicle – Non Transport but still proceeded to hold wrongly that being taxi, it is a light motor vehicle and hence the driver was holding a valid driving licence to drive the offending vehicle.

The owner/insured of the offending vehicle did not appear to contest the proceedings.

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

As has been pointed out by counsel for the appellant, the Tribunal has accepted that the vehicle in question is a taxi and the driver did not possess driving licence to drive a commercial vehicle.

Section 149 of the Motor Vehicles Act, 1988 (in short 'the Act') provides for duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. The Insurance Company can raise a defence which comes within the purview of sub-Section (2) of Section 149 of the Act reads as under:-

> "Section 149 - **Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks**-
>
> (1) xx xx xx
>
> (2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—
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> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—
>
> (i) a condition excluding the use of the vehicle—
>
> (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
>
> (b) for organised racing and speed testing, or
>
> (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
>
> (d) without side-car being attached where the vehicle is a motor cycle; or
>
> (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
>
> (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
>
> (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.
>
> (3) xx xx xx xx"

A similar issue came up for consideration before Hon'ble the Supreme Court in Kusum Rai and others' case (supra). Keeping in view the admitted position of the case that the vehicle in question was being plied as a commercial vehicle and the driver was not possessing a driving licence to drive a commercial vehicle, the insured was held guilty of violating one of the conditions of the insurance policy. When the facts and circumstances of the instant case are examined in the light of dictum laid down in Kusum Rai and others' case (supra), as has been rightly argued by counsel for the appellant that the Insurance Company cannot be altogether exonerated of its liability to pay compensation to the victim(s) being a third party but it certainly has the right to recover the amount of compensation from the insured after discharging liability qua the claimants.

With these observations, the findings recorded by the learned Tribunal on issue No.5 are modified accordingly.

For the reasons aforesaid, the appeals are disposed of in the aforesaid terms.

AUGUST 16, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no