211.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5148 of 2013 (O&M)
Date of decision:12.05.2016

Reliance General Insurance Company Limited ... Appellant

versus

Mukesh Kumar and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Man Mohan, Advocate,
for Mr. Suman Jain, Advocate,
for the appellant.

Mr. Lakshay Bajaj, Advocate,
for Mr. Harkesh Manuja, Advocate,
for respondent No.2.

K.Kannan, J. *(Oral)*

The appeal by the Insurance Company is on an issue of liability on a plea that the accident had taken place on 31.01.2011. The driver held a driving licence that expired on 03.11.2008. He had applied for renewal subsequent to the accident and secured the driving licence effective from 11.02.2011. The Tribunal has relied on some judgments to the effect that even after the expiry of licence, if the driver was not disqualified from holding a driving licence and obtained a renewal subsequently, it will be taken as effective driving licence. The same position also finds utterance of the judgment of this court in ***Oriental Insurance Company Limited Versus Surjit***

Kaur and others in FAO No.672 of 2014, decided on 08.07.2015 referring to the same proposition. With respect, the judgment failed to take notice of change in law and the meaning of the effective driving licence as contemplated under Sections 3 and 149 of the Motor Vehicles Act. The point has been directly considered in ***Ishwar Chandra and others Versus The Oriental Insurance Company Limited and others-AIR 2007 (SC) 1445*** where the court had held that if the driving licence had expired prior to the occurrence of accident and renewal was made subsequently, the Insurance Company could not be made liable and the driver could not be taken as having an effective driving licence. This proposition is expounded consistently in the following judgments: ***National Insurance Company Versus Jarnail Singh-(2007) 15 SCC 28; Ram Babu Tiwari Versus United India Insurance-(2008) 8 SCC 165*** and ***New India Assurance Company Versus Suresh Chandra Aggarwal-(2009) 15 SCC 761***. The judgment in ***Surjit Kaur*** (supra) without reference to Supreme Court judgments must be taken to be not setting out a correct proposition of law and rendered per incuriam. The Insurance Company will have the benefit of recovery against the owner and driver. The appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

12.05.2016
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