IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

FAO No.5196 of 2013 (O&M)
Date of Decision: December 09, 2016.

Charanjit Kaur

..........APPELLANT(s).

VERSUS

New India Insurance (Assurance) Company Ltd and Anr.

........RESPONDENT(s).

(2)

FAO No.5197 of 2013 (O&M)

Charanjit Kaur

..........APPELLANT(s).

VERSUS

New India Insurance (Assurance) Company Ltd and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amandeep Saini, Advocate
for the appellant (s).

Mr. Paul S. Saini, Advocate
for respondent No.1.

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SURINDER GUPTA, J.

Both the above captioned appeals have been filed by owner of Indica Car bearing registration No.PB-65-C-1692 (later referred to as 'the offending vehicle') against two separate awards both dated 23.04.2011, arising out of same accident, passed by Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (later referred to 'The Tribunal'). The Tribunal while awarding the compensation to the claimants, allowed rights to the insurer of the offending vehicle to recover the same from the appellant.

The short question which arise for consideration in these appeals is as to whether the Tribunal could record finding that the driving licence of driver of the offending vehicle was not valid simply on tendering of a report, alleged to have been issued by the Licensing Authority. The observations recorded by the Tribunal while holding that the driving licence of driver of the offending vehicle was not valid, are reproduced as follows:-

> "The learned counsel for respondents produced the report of DTO Ex.R1, copy of driving licence Ex.R2 and insurance policy Ex.R3 on the file. Driving licence of Harnek Singh deceased Ex.R2 was issued by licensing authority, motor vehicle department, Mathura. Even petitioner Baljinder Kuar stated in cross-examination that Harnek Singh was having driving licence, which was issued from outside Punjab. Ex.R1 is the verification report of the driving licence Ex.R2 bearing No.2615/Mathura/06 issued by Licensing Authority, Motor Vehicle Department, Mathura, which state that the above said driving licence in the name of Harnek Singh has not been issued by the office. No rebuttal has been produced on the file by respondent No.1. As such, it can be safely held that driving licence of deceased Harnek Singh was fake and forged."

The onus was on the insurer of the vehicle to prove that the driving licence of driver of the offending vehicle was not valid and this fact could be proved by leading some cogent and convincing evidence and not by tendering in evidence a report, authenticity of which could not be ascertained by the claimants or owner of the offending vehicle. The owner of the offending vehicle were deprived of opportunity to cross-examine the person, who had made this report. The appellant has also placed on record of this appeal a report (Annexure A-1) made by the same Licensing Authority, which states that the same licence regarding which report Ex.R1 was made, was genuinely issued by the Licensing Authority and it was valid from 20.09.2007 to 19.09.2010, meaning thereby that on the date of accident, driving licence of Harnek Singh was valid. The above report (Annexure A-1) has not been discussed with a view it is suo-motu admissible in evidence. The question is as to whether the insurer has been able to discharge his liability to prove that the driving licence of driver of the offending vehicle was not valid by tendering report (Ex.R1) and answer to this in negative. In view of my above discussion, both the appeals have merits and are allowed. The impugned award, so far as it relates to grant of recovery rights to the insurer against the appellant, is set aside.

(SURINDER GUPTA)
JUDGE

December 09, 2016.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No