IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 1948 of 2016
Date of decision: 14.09.2016

Oriental Insurance Company Limited *........ Appellant*

Versus

Kaushalya and others *.......Respondents*

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

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Present: Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal lays challenge to award dated 10.11.2015 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (in short, 'the Tribunal') whereby compensation has been awarded in favour of Kaushalya and others in regard to death of Manohar Lal in a motor vehicular accident that took place on 11.01.2012, under Section 163 A of the Motor Vehicles Act, 1988 (in short, 'the Act').

The sole submission made by counsel for the appellant is that as driver of the vehicle *i.e* truck bearing No. PB 7V-1529 was not holding a valid driving licence at the time of occurrence, the insurance company is either liable to be exonerated of its liability or given right of recovery against the insured. To substantiate his contention, counsel has submitted that the insurance company examined Deep Raj Chug (RW1), investigator appointed by the Insurer who brought on record report of the concerned

Licensing Authority at Alwar that driving licence on record was not issued by the said authority which gives a valid defence in favour of the insurer.

I have heard counsel for the appellant and perused the paper book particularly the award impugned.

Be that as it may, the Tribunal framed a specific issue No. 6 '*whether terms and conditions of insurance policy pertaining to vehicle bearing registration No. PB 7V-1529 were violated and therefore, respondent No. 2 stood absolved of its liability? OPR*'. There cannot be any dispute about the settled position in law that the insurance company is obligated to discharge onus to substantiate its plea that any of the defences available in Section 149 of the Act is available to it, in regard to violation of the terms and conditions of the contract of insurance. Concededly, the insurer did not examine a witness from the Licencing Authority concerned to prove such a report collected by its investigator. Any such report issued by the Licencing Authority cannot be said to be *per se* admissible in evidence. Further more, in case such a report is accepted, without providing any opportunity to the insured to examine the relevant record, basis of the report and to challenge correctness thereof, a serious prejudice would be caused to the insured who has obtained the insurance policy to cover his risk. In this view of the matter, I do not find any merit in contention of the appellant that the tribunal has committed an error much less illegality in holding the insurer jointly and severally liable to pay compensation by holding that the insurance company is liable to indemnify the insured in discharge of contract of insurance entered between the parties.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

14.09.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No