

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.6156 of 2013 (O&M).
Date of Decision: 12.05.2016.**

Oriental Insurance Co.

....Appellant.

VERSUS

Vaharbhi Rai and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vinod Chaudhari, Advocate for the appellant.

Notice to respondents No.3 and 5 dispensed with vide order
dated 20.01.2015.

Respondent No.4 exparte.

SNEH PRASHAR, J.

CM-25357-CII-2013

The present application under Section 5 of the Limitation Act
has been filed for condonation of delay of 5 days in filing the appeal.

For the reasons enumerated in the application, the same is
allowed. Delay of 5 days in filing the appeal is hereby condoned and the
application stands disposed of.

FAO-6156-2013 (O&M)

Challenge in this appeal is to the award dated 23.07.2013
passed by learned Motor Accident Claims Tribunal, Ludhiana (for short,

“the Tribunal”) by virtue of which the petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act”) filed by respondents No.1 and 2-claimants was allowed and the appellant-insurer of Tata Tempo bearing temporary No.PB-10BX-7207 and then assigned registration No.PB-10CN-8255 (hereinafter referred to as “the offending tata tempo”), was held liable for payment of the compensation.

The motor vehicular accident that took life of Rekha Rai (mother of respondent No.1, daughter of respondent No.2 and wife of respondent No.5), was caused by Suraj Kumar Patel (respondent No.3) due to his rash and negligent driving of the offending tata tempo which was insured with appellant-Oriental Insurance Co., who was impleaded as respondent No.3 in the petition under Section 166 of the Act, filed by the legal representatives of the deceased (respondents No.1 and 2 herein). The petition was contested by the appellant-insurance company raising various objections including the preliminary objection that Suraj Kumar Patel (respondent No.3 herein), driver of the offending tata tempo was not holding a valid and effective driving licence on the date of accident. Learned Tribunal held the insurance company liable for payment of compensation amount to the claimants, but simultaneously observed that the insurance company shall be entitled to recover the amount so paid from the insured by way of initiating separate proceedings in case the insurance company is able to establish that the insured had violated the terms and conditions of the policy.

Learned counsel for the appellant argued that a perusal of the

driving licence 'Mark-Y' of Suraj Kumar Patel would indicate that the licence was issued on 22.04.2004 and was valid upto 21.04.2010. The vehicle, he was driving as per the registration certificate 'Mark-RA', was a medium transport vehicle. As postulated under Section 149 of the Act of 1988, a specific endorsement by the licensing authority is required for making a driving licence valid for driving a transport vehicle. The validity period can not exceed three years at one time. Since the driving licence of Suraj Kumar Patel was valid for a period of six years, the presumption is that it was valid for driving a vehicle other than a transport vehicle. Learned counsel urged that learned Tribunal noticed the said objection of the appellant-insurance company in its award, but instead of allowing the appellant-insurance company to recover the amount of compensation paid to the claimants from the insured, decided the issue relating to the said objection against the insurance company. As it was proved that the driving licence of Suraj Kumar Patel was not valid for driving a medium transport vehicle, the insurance company was not liable to pay compensation to the claimants or at the most was entitled to recover the amount of compensation so paid from the owner-insured.

There is absolutely no merit in the argument of learned counsel for the appellant. It was only an argument raised before learned Tribunal, as observed in para 25 of the award, that since the driving licence of Suraj Kumar Patel reveals that the same was issued on 22.04.2004 and was valid upto 21.04.2010 i.e. for six years, the presumption arises that it was not meant for driving a transport vehicle.

The findings of learned Tribunal on the matter relating to driving licence held by Suraj Kumar Patel, driver of the offending tata tempo, in para No.27 of the award are as under:-

“After having considered the contentions raised by counsel for the respondent No.3, I do not find myself convince with the line of arguments raised by the counsel for the respondent no.3 as admittedly the offending vehicle i.e. Tata Tempo bearing registration No.PB-10BX-7207 and now bearing No.PB-10CN-8255 is insured with the respondent no.3 and insurance Policy has been proved on the file as ex.R1 and no evidence has been led by the respondent no.3 to prove the fact that respondent no.1 was not holding valid and effective driving licence.”

There are no two thoughts on the matter that the onus to prove its objection that driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident is squarely on the insurer of that vehicle which raises such objection. From the findings of learned Tribunal, it is clear that respondent-Suraj Kumar Patel, driver of the offending tata tempo, tendered in evidence his driving licence (Mark-Y). No evidence worth in its name was led by the appellant-insurance company in support of its objection that the licence was not valid and effective for driving the offending tata tempo. For the mere reason that the licence was found to be valid for a period of six years would not render the licence as invalid and ineffective. The finding of learned Tribunal calls for no

intervention. In any case, learned Tribunal by observation gave liberty to the appellant-insurance company to recover the compensation amount so paid by it to the claimants from the insured by initiating separate proceedings and by establishing therein that there had been violation of terms and conditions of the insurance policy.

In the above premise, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

12.05.2016.
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