IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4007 of 2016 (O&M)
Date of Decision : 22.08.2016

Future Generali India Insurance Co. Ltd. ....Appellant

Versus

Sunita and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pradeep Kumar, Advocate
for the appellant.

Surinder Gupta, J.

CM No. 15773-CII of 2016

This is application under Section 151 CPC for pre-ponment of appeal, which is fixed for 31.08.2016.

For the reasons stated in the application, the same is allowed and appeal, which is fixed for 31.08.2016, is preponed and taken up on board today itself for hearing.

FAO No. 4007 of 2016 (O&M)

This is appeal by Future Generali Insurance Co. Ltd. challenging award dated 12.04.2016 passed by Motor Accident Claims Tribunal, Panipat (later referred to as 'the Tribunal') awarding compensation of ₹9,36,892/- to claimants for death of Manjit Singh son of Sohan Singh, husband of claimant no.1 and father of claimants no. 2 to 4 in a motor vehicle accident with car bearing temporary registration no. HR-99-QD-7753 {later allotted permanent registration no. HR-51-AX-9186 (later referred to as 'the offending vehicle')}.

2. Learned counsel for the appellant has argued that Tribunal while passing the award has committed error in not awarding right to

recover the compensation amount from owner of the offending vehicle for breach of terms and conditions of insurance policy. He has argued that on record two driving licences of driver of the offending vehicle were produced out of which one was fake. The driving licence (Ex. R-7) which was produced on record by insurer from the file of criminal case registered against respondent no. 1-Pawan Kumar, alleged to have been issued by Licencing Authority, Agra, was found fake while driving licence (Ex. R-3) produced on record by driver and owner of the offending vehicle issued by Licencing Authority, Mathura was found genuine and valid.

3. Learned counsel for the appellant has argued that a person could not possess two driving licences and insurer by proving that one of the driving licence was fake has discharged the onus placed on it to prove that there was breach of terms and conditions of insurance policy.

4. Submissions made by learned counsel for the appellant were also raised before the Tribunal and were rejected on the ground that driving licence, copy of which is Ex. R-7, was not produced by driver or owner of the offending vehicle. Learned counsel for the appellant while referring to statement of respondent no. 1-Pawan Kumar, who appeared as RW-2, has argued that he admitted his signatures on the recovery memo of driving licence prepared by the police, which shows that he had produced driving licence, copy of which is Ex. R-7. If that driving licence produced by driver of the offending vehicle is found fake, the mere fact that another driving licence (Ex. R-3) was produced and was genuine and valid could be no reason to disallow recovery rights to insurance company. Respondent no. 1-Pawan Kumar while appearing as

RW-2 has stated that he had not handed over any document to police. His signatures were obtained on 2-3 blank papers. Admittedly, he was having driving licence (Ex. R-3), which was valid at the time of accident. The insurer has not produced the investigating officer, who took into possession copy of driving licence Ex. R-7.

5. Even if, it be believed that Pawan Kumar, driver of the offending vehicle was having two driving licences, it does not attract the liability of owner of the vehicle or any negligence or lapse on his part resulting in breach of terms and conditions of insurance policy. Onus was on the insurance company to prove that owner of the offending vehicle was aware that respondent no. 1-Pawan Kumar was having a driving licence which to his knowledge was fake. While appearing as RW-3, Anoop Kumar Garg, owner of the offending vehicle has stated that at the time of employing respondent no. 1-Pawan Kumar, he had assured himself about his valid driving licence to drive a car. That driving licence had been issued to respondent no. 1 by Licencing Authority, Mathura. He handed over driving licence of the driver, registration certificate of the vehicle and insurance policy to police. His submission that he had verified and assured himself while employing Pawan Kumar as driver that he was possessing a valid driving licence issued by Licencing Authority, Mathura, is un-rebutted in cross-examination and prove that he had taken sufficient precautions expected to be taken by owner of a vehicle while employing a driver and there was no breach of terms and conditions of insurance policy on his part. Even if, driver was possessing two driving licences, the action as required under law can be taken against him but cannot be termed as breach of

terms and conditions of insurance policy. In the facts and circumstances of this case submissions made by learned counsel for the appellant to this effect are discarded. Consequently, this appeal has no merit and dismissed.

August 22, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable *Yes/No*