

FAO No. 4078 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 4078 of 2016(O&M)
Date of Decision:16.9.2016

New India Assurance Company Limited

---Appellant

vs.

Nirmal Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vinod Gupta, Advocate
for the appellant

Rekha Mittal, J.

The present appeal has been directed against the award dated 29.1.2016 passed by the Motor Accident Claims Tribunal, Hoshiarpur (in short “the Tribunal”) whereby compensation has been awarded in favour of Nirmal Kaur and another in regard to death of Hira Singh in a motor vehicular accident.

The sole submission made by counsel for the appellant is that

as the alleged offending vehicle Tipper No. PB 06-Q-4680 was being plied without a fitness certificate at the time of accident i.e. 6.30 a.m. on 20.3.2015, the insurance company is either entitle to be exonerated of its liability to pay compensation or in the alternative, should be allowed recovery right against the insured.

I have heard counsel for the appellant, perused the paper book particularly the award passed by the Tribunal.

The Tribunal framed issue No. 5 and the same reads as follows:-

“Whether respondents No. 1 and 2 were not holding road permit and fitness certificate in respect of the vehicle bearing registration No. PB 06-Q-4680? OPR”

Issues No. 4 and 5 were taken up together by the Tribunal and were answered against the insurance company (respondent No. 3 therein) with the finding that the issues were not pressed by counsel for the insurance company. This apart, the insurance company is entitled to raise defences available under sub Section 2 of Section 149 of the Motor Vehicles Act, 1988 (in short “the Act”). Counsel for the appellant is fair enough to

concede that vehicle being plied without a fitness certificate is not a defence available to the insurer in view of the provisions of Section 149(2) of the Act. Furthermore, it has been pleaded by the appellant that as per the verification report, fitness certificate of the vehicle in question was valid from 20.3.2015 to 19.3.2016 and the same must have been issued at 10-00 am after opening of the office of the concerned authority. Assuming that the vehicle did not have a fitness certificate at the time of occurrence on 20.3.2015 but it had fitness certificate valid with effect from 20.3.2015 to 19.3.2016, sufficient to show that the vehicle was otherwise roadworthy and fit to be plied. Taken from any angle, I find no merit in contention of the appellant that either the insurance company can escape its liability to pay compensation or can secure right to recover the amount from the insured after satisfying the award towards the claimants.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

16.9.2016
paramjit

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