Paramjit Kaur Saini
2016.09.29 11:17
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In the High Court of Punjab and Haryana at Chandigarh

FAO- 5304 of 2016
Date of Decision:8.9.2016

HDFC Ergo General Insurance Company Limited

---Appellant

vs.

Usha Sharma and others

---Respondents

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

***

Present: Mr.Ashwani Talwar, Advocate
for the appellant

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<u>Rekha Mittal, J.</u>

The present appeal has been directed against award dated 29.4.2016 passed by the Motor Accident Claims Tribunal, Kurukshetra (in short "the Tribunal") whereby compensation has been awarded in favour of Smt. Usha Sharma and others in regard to death of Satyawan in a motor vehicular accident on 24.4.2015.

Counsel for the appellant has sought to assail the award primarily on two counts. The first submission made by counsel is that driver of the offending vehicle Bolero Maxi Milk Tanker bearing No. HR-64-9458 was not holding a valid driving licence to drive a commercial vehicle, therefore, the insured is guilty of committing breach of the terms and conditions of the contract of insurance giving valid defence to the insurer to avoid its liability under Section 149(2) of the Motor Vehicles Act, 1988 (in short "the Act"). In the alternative, it is argued that even if the insurer is held liable to pay compensation to the claimants being third party, the appellant may be given recovery right against the insured.

The second submission made is that the learned Tribunal has allowed benefit of increase in income by way of future prospects despite the fact that the matter with regard to future prospects is pending consideration before a larger bench of Hon'ble the Supreme Court of India in reference made in ***National Insurance Co. Limited vs. Pushpa and others.***

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

Counsel for the appellant has not disputed that Bolero Maxi

Milk Tanker, the vehicle involved in the accident and insured with the insurance company is a light motor vehicle keeping in view its weight being less than 7500 kgs. The learned Tribunal, on a detailed consideration of various judgments of Hon'ble the Supreme Court of India, referred to in paras 36 onwards, and by placing reliance upon **National Insurance Company Limited vs. Sri Annappa Irappa Nesaria and others 2008(1) Recent Civil Reports 848, S.Iyyapan vs. United India Insurance Company Limited and another, 2013(3) RCR (Civil) 654 and Kulwant Singh and others vs. Oriental Insurance Company Limited 2014(4) RCR (Civil) 977** has held that observations in the aforesaid judgments are fully applicable to the present case and in view thereof, respondent No. 1 was not required to have endorsement of transport vehicle on his driving licence and respondent No. 1 having licence for driving jeep (Light motor vehicle) must be held to have valid and effective driving licence for driving Bolero Maxi Milk Tanker (light goods vehicle) as its gross weight was 2450 kgs.

Counsel for the appellant has not disputed the ratio laid down in the aforesaid judgments but has submitted that as a reference has been made to a larger bench in **Mukund Dewangan vs. Oriental Insurance Compay**

<u>Limited and others 2016(4) SCC 298</u>, the appeal may be allowed. The mere fact that a reference is pending before a larger bench is neither sufficient to keep the matter pending nor to set aside the findings of the Tribunal that are based upon consistent view of Hon'ble the Supreme court in the aforesaid judgments

So far as the plea with regard to pendency of reference in regard to grant of benefit of future prospects, again, the same is not sufficient to deny benefit of future prospects till the time judgment in **<u>Rajesh and others vs. Rajbir Singh and others (2013)3 RCR (Civil) 170</u>** is varied or set aside by Hon'ble the Apex Court.

No other point has been raised.

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

(Rekha Mittal)
Judge

8.9.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No