In the High Court of Punjab and Haryana at Chandigarh

FAO No.5307 of 2016
Date of Decision:8.9.2016

National Insurance Company Limited

---Appellant

vs.

Balbir Singh and others

---Respondents

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

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Present: Mr.Paul S.Saini, Advocate
for the appellant

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

The insurance company has preferred the present appeal against award dated 31.5.2016 passed by the Motor Accident Claims Tribunal, Panchkula (in short “the Tribunal”) whereby compensation has been awarded to Balbir Singh respondent on account of injuries sustained by him in a motor vehicular accident dated 14.3.2014.

The sole submission made by counsel for the appellant is that as driver of the alleged offending vehicle was not holding a valid driving licence, liability to pay compensation to the injured cannot be fastened upon the insurance company or in the alternative, the insurance company is entitled to recovery rights against the insured after satisfying claim of the injured victim.

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

The driving licence of Tej Narain Singh, driver of bus No.HP-12-4141 is Ex. C-12. The insurance company relied upon photo copy of report Ex. R-7 issued by the concerned licensing authority. However, no witness from the licensing authority has been examined to prove authenticity of report Ex. R-7 much less providing an opportunity to the driver and owner of the vehicle or the claimant to cross examine the witness. Counsel has nothing to say if photo copy of report Ex. R-7 can be taken into consideration without producing the original and examining a witness of the concerned authority who purported to have prepared the report. This apart, Charan Singh Chandel, registered owner of the bus in question appeared in the witness box and tendered into evidence his affidavit Ex. RW1/A and stated that at the time of employment of respondent No. 1 (driver), he had seen his driving licence issued by the licensing authority, Gazipur valid from 28.11.2011 to 27.11.2014. He had also taken driving test of the driver before engaging him as a driver. Counsel has failed to point out any cogent and tangible facts elicited in cross examination of RW1 to discredit or impeach his testimony much less to prove that he had knowledge that the licence in question is not valid much less fake.

In view of failure of the insurer to lead positive evidence to establish its claim that driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident coupled with the statement of owner of the vehicle when examined in the light of enunciation of law laid down in ***United India Insurance Company Limited vs. Lehru and others 2003(2) RCR(Civil) 278*** reiterated in the recent judgment of the Apex Court ***Pepsu Road Transport Corporation vs. National Insurance Company 2013(10) SCC*** 217, I do not find any merit in contention of the appellant that driver of the offending vehicle was not holding a valid and effective driving licence sufficient to exonerate the insurance company or providing recovery rights against the insured.

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