IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.9940 of 2014 (O&M).
Date of Decision: 15.02.2016.

National Insurance Company Limited ....Appellant.

VERSUS

Gurpreet Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

Mr. M.J.S. Bedi, Advocate for respondent No.2.

Respondent No.3 exparte vide order dated 10.09.2015.

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SNEH PRASHAR, J.

By way of this appeal, the appellant-National Insurance Company has assailed the award dated 04.08.2014 passed by Motor Accident Claims Tribunal, Bathinda (for short, "the tribunal") in MACT case No.15 of 04.03.2011.

The relevant facts are that on 07.06.2009 respondent No.1-Gurpreet Singh alongwith his father was going to village Rori on a motorcycle being driven by him and his father was pillion rider. At about 6:30 a.m., when they reached near Bus Stand of village Lehri, a Tractor Trolley bearing registration No.PB-03C-7680 (hereinafter referred to as the "offending tractor-trolley") being driven by its driver Manga Singh @ Mangat Ram in a rash and negligent manner and high speed, came on the main road and struck against their motorcycle. Gurpreet Singh sustained multiple serious injuries and was shifted to Civil Hospital, Talwandi Sabo from where he was referred to Bathinda and was admitted in Jha Hospital, Bathinda where he was operated upon and he remained hospitalized from 07.06.2009 to 21.06.2009. Thereafter, he was admitted in P.G.I., Chandigarh on 25.08.2009 for treatment and was discharged on 09.09.2009. A First Information Report No.59 dated 10.06.2009 under Sections 279, 337 and 338 of the Indian Penal Code was registered at Police Station Talwandi Sabo in respect of the accident against Mangat Ram alias Mangu-driver of the offending tractor-trolly. The claimant was awarded compensation to the tune of Rs.2,52,000/- alongwith interest at the rate of 6% per annum from the date of filing of the petition till realization. Respondents No.1 to 3, being driver, owner and insurer of the offending tractor-trolley were held jointly and severally liable for payment of compensation amount.

Feeling aggrieved by the award dated 04.08.2014, the claimant-appellant-insurance company has preferred the instant appeal.

The submissions made by Mr. Paul S. Saini, learned counsel representing the appellant and Mr. M.J.S. Bedi, learned counsel representing respondent No.2 (driver of the offending tractor-trolley) have been heard.

Learned counsel for the appellant argued that in the written statement filed by the insurance company before the tribunal a specific preliminary objection was raised that the driver of the offending tractor-trolley was not holding a valid and effective driving licence at the time of accident and there being breach of terms and conditions of the insurance policy the insurer was not liable to pay any compensation to the claimant. On the basis of the pleadings of the parties, learned tribunal framed Issue No.2 as under:-

> *"Whether the petitioner is entitled to claim any compensation. If so, to what extent and from whom? OPP."*

Learned counsel asserted that the objection raised by the insurance company against the validity of the driving licence possessed by driver of the offending tractor-trolley was covered under the above Issue No.2. To substantiate its objection, the appellant-insurance company deputed Mr. R.K. Sharma, Investigator, Bathinda to conduct investigation into the matter and to verify the driving licence of the driver-respondent No.2. As per the report dated 15.09.2011 submitted by the Investigator, the driving licence of driver of offending tractor-trolley could not be procured as it was not taken in possession by the police at the time of accident and was not available on the file of the criminal case. The driving licence was then obtained by counsel representing the insurance company from the counsel representing the driver and owner of the offending vehicle. Since it had been issued by Licensing Authority, Mathura, it was sent for verification to the concerned authority and as per report dated 18.04.2012 received from the said authority the driving licence possessed by respondent No.2-driver of the offending tractor-trolley, had not been issued by its office in the name of Manga Singh (respondent No.2). The clerk of the

Licensing Authority, Mathura was summoned by depositing requisite diet money etc. Despite service, the witness did not appear and was ordered to be summoned through bailable warrants. The warrants could not be served on the witness and ultimately the evidence of the insurance company was closed by order dated 16.10.2012 of the learned tribunal. The insurance company challenged the order dated 16.10.2012 before this Court by way of Civil Revision No.7174 of 2012 which was allowed vide order dated 04.09.2013 granting one opportunity to the insurance company to summon and examine the witness. However, the position remained the same as the clerk, Licensing Authority, Mathura could not be served and as such could not be examined.

Learned counsel urged that the circumstances in which the witness could not be served were beyond the control of the insurance company because he was found on leave when the process server went to the office of the Regional Transport Officer for his service. As such, the insurance company could not be penalized for non appearance of the witness when it had tried its best to produce him in the witness box. The order closing evidence of the insurance company was unjustified and deserves to be set aside.

Needless to say that the onus to prove its objection that respondent No.2-driver of the offending tractor-trolley was not holding a valid and effective driving licence was squarely on the insurance company. Its allegation that on verification of the driving licence of respondent No.2 from the concerned licensing authority, by whom it had been issued, it was reported that the driving licence had not been issued by its office and was a fake licence, was required to be proved by producing substantive and reliable evidence. Its mere oral assertion was not enough to accept its objection. After its evidence was closed by the tribunal, a revision petition was filed by the insurance company which was allowed by this Court and one more opportunity was allowed to summon some representative of the licensing authority alongwith the relevant record for proving the alleged verification report, but for the reasons best known to the insurance company it failed to avail the opportunity given. There was nothing to prove that the witness on the date of hearing before the tribunal was on leave. It was for the insurance company to take all concrete and effective steps to produce the witness on the date fixed for his examination by the tribunal. After all there has to be an end to the trial at some juncture. When the insurance company failed to avail the opportunity given to lead the relevant evidence, it has to suffer the consequences arising from the same.

Since the insurance company had failed to prove its objection that the driver-respondent no.1 of the offending tractor-trolley was not having a valid and effective driving licence on the date of accident, learned tribunal had rightly fastened the liability to pay the compensation amount upon it. Thus, finding no ground for intervention in the award and there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

15.02.2016.
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