IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-3708-2015 (O&M)
Date of decision: 15.09.2017

SURESH KUMAR AND ANR ...*Appellants*

Versus

NAVEEN KUMAR AND ANR ...*Respondents*

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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Present : Mr. Sanjay Mittal, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No.2

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REKHA MITTAL, J. (Oral)

The owner and driver of Tractor bearing No. HR-36-M-5296 are in appeal to assail findings of the Tribunal on issue No.3 whereby it has been held that driver of the offending vehicle was not holding a valid driving licence, therefore, the insurance company would satisfy the award but entitled to recover the amount from the owner and driver of the offending vehicle in the light of judgment of Hon'ble the Supreme Court ***National Insurance Co. Ltd. vs Swaran Singh 2004(2) R.C.R. (Civil) 114.***

Counsel for the appellants has submitted that the offending vehicle was a Tractor attached with Trolley. The driver of the vehicle possessed licence to drive car or jeep, therefore, he was competent to drive the vehicle in question, thus, findings of the Tribunal on issue No.3 cannot be allowed to sustain and liable to be set aside. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court ***Nagashetty Vs. United India Insurance Company Ltd. 2001 (4) RCR (Civil) 597***. Further reference has been made to latest judgment of Hon'ble the Supreme Court ***Mukund Dewangan vs Oriental Insurance Co. Ltd., 2017 (7) Scale 731***.

Counsel representing the insurance company, in the light of enunciation laid down in *Mukund Dewangan's* case (supra) is not in a position to support findings of Tribunal on issue No. 3 that either the driver was not possessing a valid licence to drive the vehicle in question or insurer is entitled to have recovery right against the owner and driver of the offending vehicle in the light of judgment in *Swarn Singh's* case (supra). In this view of the matter, findings of the Tribunal on issue No.3 cannot be allowed to sustain and accordingly ordered to be set aside.

For the foregoing reasons, the appeal is partly allowed and the insurance company shall be liable to pay compensation to the claimants without any right of recovery.

15.09.2017 **(REKHA MITTAL)**
Mohan Bimbra **JUDGE**

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