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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 21.07.2017

1. FAO No. 7223 of 2016 (O&M)

Oriental Insurance Co. Ltd. .....Appellant

versus

Kuldeep Singh and another .....Respondents

2. FAO No. 7503 of 2016 (O&M)

Oriental Insurance Co. Ltd. .....Appellant

versus

Ramesh Kumar & another .....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Navin Kapur, Advocate
for the appellant.

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Rajbir Sehrawat, J.(Oral)

CM No. 24824-C-2016

This is an application for condoning the delay of 105 days in re-filling the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 105 days in re-filling the appeal is condoned.

FAO No. 7223 of 2016

Both the appeals arise from the same accident although the two different awards have been passed by MACT, SAS Nagar, Mohali. In one case filed by the claimant-Kuldip Singh, the award amount is Rs. 32,525/-

and in the other appeal amount awarded to the claimant-Ramesh Kumar is Rs. 3,60,700/-. The Insurance Company has challenged both these awards by filing the above stated two separate appeals.

Learned counsel for the Insurance company, at the outset, states that he does not contest the award qua their liability to make the payment to the claimants. However, he submits that the insurance company is entitled to have recovery rights against the owner who himself was driving.

Learned counsel for the appellant states that he is challenging only liability of the insurance company to make the payment without granting recovery rights and therefore, he says that in the instant case the insurance company should have been granted the recovery rights since the driving license of the driver was not genuine. Learned counsel states that although the renewed license was found genuine but the original license of the driver was found to be fake. He states that although the last renewal by DTO, Ropar was genuine and before that even the renewal by the DTO, Hoshiarpur was found to be genuine but the original license issued prior thereto by the DTO Hoshiarpur was found to be not genuine.

The submission of the learned counsel for the appellant that the MACT, SAS Nagar, Mohali has not considered the evidence led by the appellants before it while deciding the matter against them and while denying their recovery rights. He submits that the insurance company had tendered Ex. RW1/4, the report from DTO, Hoshiarpur regarding the original driving license and also Ex.RW1/9 the investigating report of the investigation conducted by the insurance company at its own level. He submits that these documents have not been properly appreciated by the MACT, SAS Nagar, Mohali.

However, a perusal of the award passed by the MACT, Mohali shows that both these documents have been duly considered by the MACT, Mohali and those have been rightly rejected for good reasons. It has been recorded by the MACT, Mohali while rejecting these documents that the insurance company has not produced any witness from the office of DTO, Hoshiarpur to prove EX.RW1/4 and has not produced any witness to prove the investigating report Ex.RW1/9. There is no infirmity in the findings recorded by the MACT, Mohali. Both these documents, as set up by the Insurance company, have rightly been rejected by the Tribunal. Unless witness from the DTO Hoshiarpur is examined to prove the authenticity of the communication, which the insurer sought to rely upon, the same cannot be read in evidence. Unless the original record of DTO, Hoshiarpur is proved by the insurance company the genuineness of the original license cannot be said to be proved as wrong. Much less of speak of producing any original record of DTO, Hoshirapur even the communication received by the insurer from the DTO Hoshiarpur has not been proved by them before the Tribunal as per the requirement under law. Even investigating report has not been proved. This report cannot be read in evidence unless the opposite party is given an opportunity to cross examine the person preparing this document. So any content of this document cannot be relied upon against that opposite party. In essence, both these documents are only the document prepared by the insurance company. Even authenticity of both these documents has not been proved before the Tribunal.

Hence, since there is no evidence led by the insurance company regarding the license being not genuine, therefore, the Tribunal has not committing any illegality in holding that the driving license was genuine.

Learned counsel appearing for the Insurance Company has relied upon the judgment of Hon'ble Supreme Court rendered in ***National Insurance Co. Ltd. vs. Geeta Bhat and Ors., 2008 ACJ 1498***. However, a perusal of judgment shows that case is distinguishable from the facts of the present case. A bare perusal of the judgment shows that it nowhere has laid down, as a matter of law, that the investigating report, self-prepared by insurance company, shall be deemed to be proved in the court irrespective of the fact whether the person who has prepared that report has not been examined as witness before the Court. Nor does this judgment say that any communication regarding the nature of the driving license from the office of DTO, Hoshirapur from the Insurance company shall be, Ipso facto, evidence of the non-genuineness of the vehicle, irrespective of the fact that nobody is produced as the witness from that office who is stated to have issued that communication.

In view of the above situation, both the appeals filed by the Insurance Company are dismissed.

21st July, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No