**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 5530 of 2017(O&M)

Date of decision: 28.8.2017

United India Insurance Co. Ltd. ….Appellant

VERSUS

Amit Sehdev and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Talwar, Advocate for the appellant.

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REKHA MITTAL, J.

The present appeal directs challenge against award dated 31.05.2017 passed by the Motor Accidents Claims Tribunal, Gurdaspur (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by respondent No.1/claimant in a motor vehicular accident on 17.05.2016.

Counsel for the appellant has assailed findings of the Tribunal on issue No.3 with the submission that driver of the offending vehicle i.e. truck No.PB-11-BU-3095 was not possessing a valid driving licence, therefore, insurance company is liable to be exonerated of its liability or in the alternative should be given recovery rights against the insured after satisfying the award towards the claimant. To bring home his contention, it is argued that it is the consistent case throughout that gas cylinders were being carried in the offending truck but the driver did not possess driving licence to drive a vehicle transporting hazardous goods in terms of Section 14 of the Motor Vehicles Act, 1988 (in short 'the Act').

Another submission made by counsel is that as per plea of the claimant, he was doing the business of manufacturing gold items but due to amputation of his left arm below elbow, he is unable to do the said work. Counsel would urge that it is not plea of the claimant that he has closed his shop of running the aforesaid business, therefore, claimant, at best, can be reimbursed for salary of an employee to be assigned with the work of manufacturing gold items.

I have heard counsel for the appellant, perused the paper-book particularly the award.

The insurance company, in its reply to the petition, raised a plea that the driver was not holding a valid and effective driving licence, therefore, there was breach of the terms and conditions of contract of insurance. No specific plea was raised by the insurance company that as the vehicle in question was carrying goods of dangerous or hazardous nature, licence to drive a transport vehicle would not meet the requirements in law to drive the vehicle in question. Similarly, no such contention was raised by counsel for the insurance company before the Tribunal while advancing arguments on issue No.3. Under the circumstances, the insurance company cannot be allowed to raise a factual dispute for the first time, in appeal.

With regard to plea qua quantum of compensation assessed by the Tribunal, the claimant suffered disability to the extent of 70%. There is no counter to case of the claimant that he was doing the business of manufacturing gold items but due to amputation of his left arm, he cannot do the work of manufacturing. Plea of the claimant with regard to his business and earning stands corroborated from the Income Tax Returns for the years 2013-14, 2014-15 and 2015-16 Ex.A3 to A5 respectively. The Tribunal has awarded an amount of Rs.1,40,000/- towards disability to the extent of 70% and another amount of Rs.10,00,000/- for future loss of income. Counsel for the insurance company has fairly conceded that if compensation is computed by adopting multiplier method but to the extent of 70% loss of income, it would be much more than what has been awarded by the Tribunal qua disability and loss of future income. As the claimant has been rendered completely unfit to do the work of manufacturing gold items and his income from the said business is duly reflected in the Income Tax Returns proved on record, I do not find any error much less illegality in assessment made by the Tribunal qua disability and loss of future income.

No other point has been raised.

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

AUGUST 28, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no