IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.03.2018

FAO-2023-2006 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Tamrej and others ... Respondents

FAO-2024-2006 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Murad Ali and others ... Respondents

FAO-2025-2006 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Niamul and others ... Respondents

FAO-2026-2006 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Maseeta and others ... Respondents

FAO-2027-2006 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Abdul Qayum and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Munish Mittal, Advocate
for respondent No.1.

Mr. H.K. Aurora, Advocate
for respondent No.3.

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<u>REKHA MITTAL, J. (Oral)</u>

This order will dispose of FAO Nos.2023 to 2027 of 2006 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.2023 of 2006.

Counsel for the appellant-insurance company has assailed the award primarily on two counts. It is argued that as the injured was gratuitous passenger in TATA-709 bearing No.UP-07-G-5609, insurance company has wrongly been fastened with liability to pay compensation. Another submission made by counsel is that driver of the offending vehicle did not have licence to drive the vehicle in question on the day of occurrence i.e. 11.06.2002, proved by Dilwar Singh Gusian, Assistant Regional Inspector, Licensing Authority, Dehradun RW3, therefore, insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative can press for right of recovery against the insured for violating the terms and conditions of the insurance policy constituting a defence in favour of the insurance company under Section 149(2) of the Motor Vehicles Act, 1988.

Counsel representing the respondents have supported findings of the Tribunal on the issues raised by the insurance company with the submission that overwhelming evidence has been adduced by the claimants to establish their plea that they were travelling in the offending vehicle being owner of the goods transported in it. In addition, it is argued that this Court vide order dated 17.12.2015 has already rejected this contention of the insurance company holding that if the Tribunal had two different versions and it chose to rely on what was recorded in the FIR, the Court will find no reason to differ with such an assessment.

With regard to driving licence, it is urged that the original licence was issued in October, 1996 and it contains an endorsement of renewal w.e.f. 04.01.2000 to 03.01.2003, therefore, the driver was duly authorised to drive the vehicle in question on the day of occurrence i.e. 11.06.2002. It is further argued that testimony of Dilwar Singh Gusian RW3 is conspicuously silent if the driver was not given extension of driving licence for the aforesaid period by the licensing authority at Dehradun.

I have heard counsel for the parties, perused the paper book particularly the award passed by the Motor Accidents Claims Tribunal, Panchkula on 16.12.2005.

Be that as it may, it is clearly borne out from the records that contention raised by the insurance company with regard to claimants being gratuitous passengers in the vehicle already stands rejected by this Court vide order dated 17.12.2015. In the light of aforesaid order passed by this Court, counsel for the insurance company should not have raked up this issue while opening his arguments. In this view of the matter, contention raised by counsel for the insurer is highly misconceived and ordered to be rejected.

So far as the question of competency of the driver to drive the vehicle in question, perusal of copy of the driving licence appended with the appeal makes it evident that there is an endorsement with regard to permission to the driver to drive the vehicle in terms of original licence w.e.f. 04.01.2000 to 03.01.2003. The witness examined by the insurance company is conspicuously silent with regard to the correctness or otherwise of this endorsement on the driving licence. There cannot be dispute about the settled position in law that once the insurance company has raised a plea that driver did not possess a valid licence, it is obligated upon the insurance company to establish its plea by leading cogent evidence. By taking into consideration the driving licence coupled with testimony of Dilwar Singh Gusian RW3, I do not find any reason to differ with the findings recorded by the Tribunal negating plea of the insurance company that driver was not competent to drive the vehicle in question on the day of occurrence.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

08.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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