IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 FAO No.6650 of 2012 (O&M)
Date of decision: 04.05.2018

ANIL KUMAR AND ANR ... Appellants

Versus

ROSHNI AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Saurabh Bhardwaj, Advocate for the appellants.

Ms. Parmeet Kaur, Advocate for
Mr. Sanjeev Kodan, Advocate for the insurance company.

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

CM Nos.32251-52-CII of 2012

Heard.

Allowed as prayed for. Delay of 5 days in filing and 80 days in refiling the appeal stands condoned.

Main Case

The present appeal has been filed by the driver and owner of offending jeep No.HR-64-2711, to challenge findings of the Tribunal on issue No.3 on the basis whereof the insurance company has been held entitled to recover the amount of compensation from respondent No.2/insured/owner of the offending vehicle after payment of compensation to the claimants.

The sole submission made by counsel for the appellants is that as the insurance company did not raise a specific plea that the offending vehicle was being plied as commercial vehicle/taxi nor any issue in this regard had been framed by the Tribunal, the appellants have been deprived of their right to counter any such plea which was sought to be raised during course of hearing at the time of culmination of the proceedings. It is further argued that findings recorded by the Tribunal on the basis of statement of Ramesh PW2 that the vehicle was being used as taxi cannot be allowed to sustain and liable to be set aside.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.3.

The Tribunal framed issue No.3 to the following effect:-

> *"Whether respondent No.1 was driving the above jeep in violation of terms of insurance policy as pleaded by respondent No.3 in its reply, if so its effect? OPR-3"*

Perusal of the written statement filed by the insurance company would make it evident that no such plea was raised by the insurance company that the vehicle was being plied as commercial vehicle/taxi, constituting violation of terms and conditions of the policy. However, a plea was raised by the insurance company in para 3 of the preliminary objections that the vehicle was being driven in violation of rules of the Motor Vehicles Act, 1988, insurance policy condition, without any route permit and fitness certificate, hence respondent No.3 is not liable to alleged claim as insurer. In absence of any such aforesaid plea having been raised by the insurance company, the appellants were taken by surprise at the time of final adjudication when the insurance company sought to rely upon statement of Ramesh PW2 to contend that the vehicle was being used for commercial purpose. As findings on issue No.3 have been recorded by the Tribunal without framing a specific issue in this regard and by providing an opportunity to the appellants to explain their position in regard thereto, findings on issue No.3 cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the appeal is allowed. Issue No.3 is recast to the following effect:-

> Whether the vehicle in question was being used as a commercial vehicle/taxi, therefore, the insured is guilty of violating the terms and conditions of the insurance policy? OPR-3

The matter is remitted to the Tribunal for decision of issue No.3 afresh. The Tribunal shall allow opportunity to the parties to adduce evidence on the additional issue and dispose of issue No.3 on the basis of materials already on record and additional evidence, if any, to be adduced by the parties. The parties through their counsel are directed to appear before the Tribunal on 29.05.2018.

(REKHA MITTAL)
JUDGE

04.05.2018
ashok

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