IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

FAO 1991 of 2013 (O&M)
Date of decision: 23.04.2018

Sombir and another ....*Appellants*

Versus

ICICI Lombard General Ins & anr. ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Ashok Jindal, Advocate
for the appellants

Ms Vandana Malhotra, Advocate
for the insurance company

-.-

Rekha Mittal, J. (Oral)

CM 7152 CII of 2018

Heard.

Allowed as prayed for and Annexure R-1 (Colly) is taken on record.

Main case

The Driver and owner of Canter No. HR-46-C-2195 have filed the instant appeal to assail findings of the Tribunal on issue No. 9 with regard to driving licence possessed by Somvir, driver of the offending vehicle on the ill fated day i.e. 26.08.2010.

The Tribunal, in para 35 of the award, has held that perusal of driving licence of respondent No. 1, mark R-2 shows that respondent No. 1 was authorized to drive LTV but he was driving Canter at the time of accident. By virtue of driving licence mark R-2, respondent No. 1 was not authorized to drive canter for which driving licence of LTV was required as it comes within purview of the commercial vehicle.

The order passed by this Court on 16.04.2018, reads as follows:-

> *"Counsel for respondent No.1 has submitted that as per the verification report of the driving licence sought to be produced by way of additional evidence, licence was found to be fake. Counsel for the appellants has nothing to contest the verification report submitted by the insurance company.*
>
> *The controversy that survives for consideration is whether driver of the offending vehicle who was holding Light Motor Vehicle licence was competent to drive the vehicle in question i.e. Canter No. HR-46-C-2195. To decide this issue, perusal of Registration Certificate available on record is necessary.*
>
> *The Registry is directed to call for the original records by the next date of hearing.*
>
> *Adjourned to 23.04.2018.*
>
> *Photocopy of this order be placed on the files of connected cases."*

Indisputably,driving licence mark R 2 possessed by the driver to drive the Light Motor Vehicle was found to be genuine.

The question that survives for consideration is *"whether driving licence possessed by the driver and placed before the Tribunal is sufficient to authorize Somvir (respondent No.1) to drive the vehicle in question when the case is examined in the light of latest judgment of Hon'ble the Supreme Court* ***Mukund Dewangan vs Oriental Insurance Co.***

Ltd., 2017 (7) Scale 731?".

Perusal of Registration Certificate of the Vehicle would make it evident that gross vehicle weight is 4,450 kilograms and unladen vehicle weight is 2,200 kilograms. As gross vehicle weight of offending vehicle is less than 7,500 kilograms, it falls within the definition of Light Motor Vehicle under Section 2 (21) of the Motor Vehicles Act, 1988. That being so, the driver was authorized to drive the vehicle in question on the basis of license possessed by him, in the light of judgment of Hon'ble the Supreme Court in *Mukund Dewangan's* case (supra). As such, the insured cannot be said to be guilty of violating the terms and conditions of the insurance policy, entitling the insurance company either to seek exoneration or press for recovery right against the insured. In this view of the matter, findings recorded by the Tribunal on issue No. 9 cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The right of recovery given to the insurance company is set aside. The insurer shall be jointly and severally liable to pay compensation to the claimants.

No order as to costs.

(Rekha Mittal)
Judge

23.04.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No