IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 FAO No.2545 of 2013 (O&M)
Date of decision: 09.02.2018

SHRI RAM GENERAL INSURANCE CO LTD ... Appellant

Versus

KUMARI MANISHA SHARMA & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arun Sharma, Advocate for the appellant.

Ms. Bhavna Grewal, Advocate for
Mr. S.K. Yadav, Advocate for respondent No.1.

Mr. Rahul Deswal, Advocate for respondent No.3.

****

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 30.11.2012 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation of Rs.51,000/- has been awarded on account of injuries sustained by Kumari Manisha Sharma in a motor vehicular accident that took place on 29.12.2010.

Counsel for the appellant-insurance company has submitted that the appeal has been preferred to assail findings of the Tribunal that driver was possessing a valid licence and the insurance company is jointly and severally liable to pay compensation.

The sole submission made by counsel for the appellant is that as the vehicle in question was being used for carrying gas cylinders and inflammable material, driver was not competent to drive the vehicle without an endorsement authorising to drive a vehicle carrying inflammable/hazardous goods.

Counsel representing respondents No.1 and 3 have supported findings of the Tribunal recorded in paras 19 and 20 of the award and the insurance company being jointly and severally liable to pay compensation to the claimants.

Perusal of the award would reveal that the insurance company in the reply has taken a plea that there is violation of terms and conditions of insurance policy. No such specific plea has been raised by the insurer that the vehicle in question was being used for carrying inflammable/hazardous goods, requiring the driver to possess the licence to drive such a vehicle. Even no such contention was raised by the insurer during the course of argument. The insurance company cannot be allowed to raise disputed question of fact for the first time in appeal that requires evidence to be adduced by the parties for its determination. That being so, contention raised by counsel for the insurance company is not tenable and liable to be rejected.

No other point has been raised.

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

No order as to costs.

As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

09.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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