IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2761-2013 (O&M)
Date of decision: 23.03.2018

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

SUKHWINDER SINGH & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sukhdarshan Singh, Advocate
for the appellant.

None for respondents No.3 and 7.

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REKHA MITTAL, J. (Oral)

The New India Assurance Co. Ltd. has filed the instant appeal on the limited issue that driver of the offending vehicle bus No.PB-13N-8455 was not holding a valid licence at the time of occurrence, therefore, insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative right of recovery against the insured after payment to the claimants. It is argued that the appellant has filed application under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional evidence to produce on record report dated 16.03.2013 (Annexure A3), communication dated 18.03.2013 (Annexure A4) and another communication dated 19.03.2013 (Annexure A5). It is argued with vehemence that as per report Annexure A3 prepared by the licensing

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authority at Mathura, DL No.5493/MTR/06 was not issued in the name of Binder Singh son of Hoshiar Singh, driver of the offending vehicle, therefore, findings of the Tribunal qua issue No.4 are liable to be modified accordingly.

There is no representation on behalf of respondents No.3 and 7, earlier being represented by counsel.

The Tribunal framed issue No.4 that reads as follows:-

> *"Whether the driver of Bus bearing No.PB-13N-8455, was not having valid and effective driving licence at the time of alleged accident, if so, what effect?OPR."*

Indisputably, onus of issue No.4 was placed upon respondent-insurance company as it was the insurance company which raised the plea that driver of the offending vehicle was not possessing a valid licence at the time of accident. The appellant did not adduce any evidence before the Tribunal to establish its plea in this regard or discharge onus of issue No.4.

The question that falls for consideration is whether the documents (Annexures A3 to A5) sought to be produced by way of additional evidence can be looked into by this Court in order to reverse findings of the Tribunal on issue No.4. Annexure A3 is a true photocopy of accident information report purported to be prepared by licensing authority, Mathura. The appellant has not examined any witness to prove the report on the basis of records and by providing an opportunity to the other side to cross examine the witness concerned. The documents (Annexures A3 to A5) are not per se admissible in evidence, therefore, the appellant cannot be

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heard to say that on the basis of report (Annexure A3) or document (Annexure A5), insurance company has been able to discharge onus of issue No.4 that driver of the offending vehicle was not possessing a valid licence. No doubt, counsel for the appellant has also placed on record documents (Annexures A1 and A2), purported communications sent by the office of Additional District and Sessions Judge, Sangrur to the District Transport Officer, Mathura regarding verification of the aforesaid driving licence. However, the report (Annexure A3) does not make reference to any such communication received by the concerned authority or the report being prepared in response thereto. In the given scenario, appellant cannot derive any advantage to its contention from the documents (Annexures A3 to A5) to sustain its plea that driver of the offending vehicle was not possessing a valid licence. That being so, findings recorded by the Tribunal on issue No.4 do not warrant intervention.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

23.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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

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