IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1459-2014 (O&M)
Date of decision: 16.03.2018

Kamlesh and others ... Appellants

Versus

Subhanath Choudher and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ramesh Hooda, Advocate
for the appellants.

None for the insurance company.

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REKHA MITTAL, J. (Oral)

CM-560-CII of 2018

Counsel for the appellants would state that he has the instructions to withdraw the application.

Ordered accordingly.

Main Case

The present appeal directs challenge against award dated 13.12.2013 passed by the Motor Accidents Claims Tribunal, Rohtak whereby compensation has been awarded on account of death of Ravinder Malik in a motor vehicular accident that took place on 01.04.2011.

The sole submission made by counsel is that the insurance company has been wrongly exonerated of liability to pay compensation on the premise that driver of the offending vehicle is presumed to be having no driving licence. It is argued that even if driver of the offending vehicle was not possessing licence or licence possessed by the driver is found to be invalid/fake, insurance company cannot escape liability to pay compensation to the claimants and, at best, can press for recovery against the insured for violation of terms and conditions of contract of insurance. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004 ACJ 1.**

There is no representation on behalf of the insurance company that was earlier being represented by a counsel.

I have gone through the award passed by the Tribunal whereby the claimants have been awarded compensation to the tune of Rs.42,93,430/- detailed in para 20 thereof. The driver and registered owner of the vehicle were proceeded against ex parte before the Tribunal. The insurance company placed on record certain documents whereby owner and driver of the offending vehicle were called upon to supply the driving licence and the learned Tribunal has taken a view that as the driver and owner had preferred to remain ex parte and they did not supply driving licence to the insurance company despite notices, it shall be presumed that driver was not possessing driving licence, therefore, there is no liability of the insurance company. Even if the driver was not possessing licence, the insurance company cannot escape liability to pay compensation to the third party as the registered owner is under an obligation in law to obtain a policy under Section 147 of the Motor Vehicles Act, 1988. Taking into consideration the principles laid down in **Swaran Singh's case** (supra), the insurance company is liable to pay compensation to the claimants but it would be entitled to recover the same from the insured on account of his failure to produce the driving licence.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

16.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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