**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1454 of 2015 (O&M)
Date of decision: 17.01.2018

Future Generali India Insurance Company Ltd.
....Appellant
Versus

Bhola Paswan and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Aggarwal, Advocate,
for the appellant-Insurance Company.

Mr. Varinderjit Singh, Advocate,
for Mr. Puneet Gupta, Advocate,
for respondent No.3.

Mr. Satinder Khanna, Advocate,
for respondent No.4.

RITU BAHRI J. (Oral)

Future Generali India Insurance Company Ltd.-appellant has filed this appeal against the award dated 23.01.2015 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.7,45,000/- has been awarded in favour of the claimants-respondent Nos. 1, 2 & 5 on account of death of Sri Kant in a motor vehicular accident which took place on 26.07.2012. Respondent Nos. 1 & 2 are parents, whereas respondent No.5 is widow of deceased Sri Kant.

Insurance Company-appellant is challenging the impugned award on the ground that driving licence of driver-Amarjit Singh (respondent No.3) was not produced before the Tribunal, therefore, it (insurance company) was not liable to make payment of compensation.

Heard, counsel for the parties.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. A perusal of the impugned award shows that driver-respondent No.3 (respondent No.1 before the Tribunal) was proceeded against exparte. Moreover, he had left the job of M/s B.D. Khosla Transport P. Ltd. (owner) and the owner did not have any copy of driving licence of the driver of offending vehicle. However, this in itself, would not violate the terms and conditions of the insurance policy. Reference, at this stage, can be made to a judgment passed by this Court in ***Vikram Dutt Kapoor and another vs. Amar Kaur and others,*** III (2005) ACC 494, wherein it has been held that mere fact that owner and driver of vehicle did not produce driving licence despite direction given by Tribunal would not absolve the insurance company of its obligation to compensate the claimants. Further, in ***Navroop Kaur and another vs. Dharam Pal and others,*** 2000 ACJ 565, this Court has held that the insurance company should have filed an application for summoning the driver as a witness. If, it is not done and a criminal case has been registered against the driver for rash and negligent driving, the insurance company could have summoned the records of the criminal case, which would indicate as to whether or not the driver had any licence and as to what is the result of the investigation conducted by the police. In the absence of any such steps taken by the insurance company, it cannot be absolved of its liability to indemnify the owner of the vehicle or to compensate the injured parties.

After going through the impugned award in the light of the above two judgments, this Court is of the view that the Tribunal has rightly given a finding against the insurance company that even if, the driving licence of driver has not been produced by owner of the offending vehicle, liability of insurance company to indemnify the claimants cannot be absolved of. Moreover, there was no denial on the part of appellant-insurance company that the vehicle was insured with it. In the present case, the driver was facing a criminal trial and FIR Ex.C2 was registered against him, but despite that, the insurance company did not take any step to summon the record of criminal case. The compensation has been rightly assessed by the Tribunal and no ground is made out to interfere therein.

Resultantly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

17.01.2018
ajp

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