

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

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FAO No.4813 of 2013(O&M)
Date of Decision:14.05.2018

Oriental Insurance Co. Ltd.

.....APPELLANT

Vs.

Rahul Ghai and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Lalit Garg, Advocate for the appellant.

Mr.Naveen Gupta, Advocate for the respondents
No. 1 and 2.

RAMENDRA JAIN J. (ORAL)

Through this appeal, Insurance Company sought recovery rights against respondents No. 1 and 2 (driver and owner of the offending vehicle).

In nutshell, on 14/15.05.2011, respondent No.3-Gurinder Pal Singh received multiple injuries on his person in a motor vehicular accident allegedly caused by respondents No. 1, while driving car bearing Registration No.CH03-F-7617 owned by respondent No.2. FIR dated 103, dated 15.05.2011 was registered under Sections 279 and 337 IPC against respondent No.1 at Police Station, Sector-3, Chandigarh. After the accident, respondent No.3 remained admitted to the hospital up to 27.05.2011. Thereafter, he filed claim petition under Section 166 of the Motor Vehicles Act, 1988 against the appellant Insurance Company and respondents No. 1 and 2.

Learned Tribunal after holding trial granted compensation of Rs.80,000/- to respondent No.3 along with interest @ 7% p.a. from the date of filing of the claim petition till its realization, vide impugned Award dated 04.07.2013.

Learned counsel for the appellant-Insurance Company contends that despite specific directions to respondents No.1 and 2, they did not produce any valid driving licence. Therefore, learned Tribunal while drawing adverse inference against respondent No.1 that he was not holding valid driving licence on the date of accident, ought to have given recovery rights to the appellant-Insurance Company.

On the other hand, learned counsel for respondents No. 1 and 2 vehemently opposing the above submissions made by learned counsel for the appellant, pleaded the legality and validity of the impugned Award.

Having given considerable thought to the rival submissions made by learned counsel for both the sides, I find merit in the contention raised by the appellant-Insurance Company for the reasons to follow:

When respondent No.1 despite specific directions of the Tribunal did not produce his driving licence, in that eventuality, it was not possible for the appellant-Insurance Company to verify the same. Therefore, the finding of the learned Tribunal that the Insurance Company cannot take benefit of the plea that it could not verify the validity of the driving licence due to non-availability of the same on record, is patently illegal.

Since, respondent No.1 did not produce his driving licence, despite specific directions, therefore, learned tribunal ought to have drawn adverse inference against him that he was not holding a valid driving licence. Instead, the learned tribunal put the entire burden on the appellant-Insurance Company and illegally rejected the claim of recovery rights of the appellant-insurance company.

In view of the above, impugned award is modified to the extent that appellant-Insurance is given recovery rights to recover the amount of

compensation paid to respondent No.3-claimant from respondents No. 1 and 2 along with proportionate interest.

The Instant FAO, accordingly disposed of.

14.05.2018
Anjal

(Ramendra Jain)
Judge

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>