IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5086 of 2013(O&M)

Date of decision: 19.3.2018

Ashok Kumar and another …..Appellants

VERSUS

Raju and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Balbir Kumar Saini, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') on account of death of Neeraj Kumar in a motor vehicular accident that took place on 20.08.2007.

The Tribunal has awarded compensation to the tune of Rs.7,91,650/- including Rs.10,000/- on account of transportation, funeral expenses and last rites of the deceased.

Counsel for the appellants, at the outset, would state that he does not press the appeal seeking enhancement of compensation but assails the award to the extent insurance company has been exonerated of its liability to pay compensation in view of findings recorded in para 31 of the award. It is argued with vehemence that as driver of the offending vehicle was ex parte before the Tribunal and owner of the vehicle died during pendency of the proceedings and his legal representatives were not brought on record nor the insurance company called upon the driver to produce the driving licence, insurance company has failed to discharge onus of issue No.3 and the same is liable to be answered against the insurance company by setting aside findings recorded by the Tribunal. In addition, it is argued that non-production of route permit does not constitute a defence in favour of the insurance company either to avoid its liability to pay compensation or press for right of recovery against the insured.

Counsel representing the insurance company, has supported findings of the Tribunal in this regard with the plea that as neither the driver nor owner of the vehicle produced driving licence, there was no opportunity with the insurance company to seek necessary verification and adduce evidence that driver did not possess a valid driving licence.

I have heard counsel for the parties, perused the paper-book particularly the award.

As counsel for the appellants does not press the appeal in regard to increase in compensation, findings recorded by the Tribunal awarding compensation on account of death of Neeraj Kumar are liable to be affirmed and ordered accordingly.

Perusal of para 31 of the award makes it evident that the Tribunal has exonerated the insurance company primarily on two counts i.e. the driver did not have a valid and effective driving licence and route permit of the vehicle has not been placed on file.

The Tribunal framed issue No.3 to the following effect:-

"3. Whether respondent No.1 was holding the valid and legal driving licence on the day of occurrence? OPR3"

As per the settled position in law, it is an obligation of the insurance company to establish that the insured is guilty of violating the terms and conditions of the insurance policy or/and there are grounds with the insurer to defend the claim under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). As has been rightly argued by counsel for the claimants, driver of the vehicle was proceeded against ex parte and the registered owner died during pendency of proceedings but his LRs were not brought on record. It is not clear if the registered owner died after service in the proceedings or prior thereto. However, indisputably, insurance company did not call upon the driver or LRs of registered owner to produce the driving licence. Under the circumstances, the Tribunal has seriously erred by recording a finding, based on presumption that as a case under Section 181 of the Act was registered against respondent No.1, he was not having valid driving licence. As a matter of fact, the insurance company failed to adduce any evidence to discharge onus of issue No.3, therefore, findings recorded by the Tribunal that driver was not possessing a valid licence cannot be allowed to sustain and ordered to be set aside.

So far as the finding that route permit of the vehicle was not produced, non-possessing of a route permit or deviation from route does not constitute a defence in favour of the insurer under Section 149(2) of the Act. In this view of the matter, the Tribunal has misdirected itself by exonerating insurance company of its liability to indemnify the insured in discharge of its obligation under the contract of insurance. Hence, the insurance company shall be jointly and severally liable to pay compensation to the claimants.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The insurance company shall deposit compensation assessed by the Tribunal within a period of two months.

No order as to costs.

MARCH 19, 2018 **(REKHA MITTAL)**

'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no