IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 537 of 2013 (O&M)
Date of decision: 14.09.2018

New India Assurance Company Limited .... *Appellant*

Versus

Dilbag and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vinod Gupta, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The appellant-insurance company has filed this appeal on the limited issue that Ram Darshan alias Mangat, driver of Truck No. HR 55 1113 did not possess a licence, authorizing him to drive the vehicle in question which is a heavy transport vehicle.

Counsel for the appellant would urge that though the Tribunal, in para 18 of the award, has noticed that driver did not possess a licence to drive a heavy transport vehicle but still the Court by relying upon judgment of Jammu and Kashmir High Court ***Oriental Insurance Company Limited vs. Darshana Devi and others, 2011 ACC 76*** has held that the insurance company is jointly and severally liable to pay compensation but without giving any right of recovery against the insured for violating the terms and conditions of the insurance policy.

There is no representation on behalf of respondent No.3, owner of the offending vehicle and insured under the policy, issued by the insurance company.

The Tribunal has noticed that Ram Darshan alias Mangat had driving licence Ex. R1, authorizing him to drive the vehicles, motorcycle, scooter and car only and he had no licence to drive the Truck i.e. heavy vehicle. As the driver was not holding a licence to drive a transport vehicle, the insured is guilty of violating the terms and conditions of insurance policy that constitutes a defence in favour of the insurer under Section 149 (2) of the Motor Vehicles Act, 1988. The Tribunal has rightly held that the insurance company cannot be exonerated of its liability to pay compensation to claimants, but at the same time, faulted in holding that the insured is not guilty of violating the terms and conditions of the policy. Had the insured bothered to see the driving licence possessed by the driver or if he had seen the licence but still given the vehicle for driving by Ram Darshan alias Mangat who was not authorized to drive the Truck on the basis of licence Ex.R1, it can safely be held that the insured is guilty of intentionally violating the terms and conditions of insurance policy. That being so, the insurer is entitled to have right of recovery against the insured after payment of compensation to claimants. Accordingly, findings of the Tribunal on issue No. 3 are modified to the effect that the insurance company shall be liable to pay compensation to claimants but would be entitled to recover the amount of compensation from the insured by filing an appropriate application before the Tribunal.

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

(Rekha Mittal)
Judge

14.09.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No