IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

FAO 2482 of 2016(O&M)
Date of decision: 21.11.2018

Jasmer alias Jashmer and others *.......Appellants*

versus

United India Insurance Co. Limited and others *......Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Mandeep Singh Khillan, Advocate
for the appellant

Mr. Pardeep Kumar, Advocate
for respondent No. 1
-.-

Rekha Mittal, J. (Oral)

CM 9153 CII of 2016

Prayer in this application is for condoning delay of 448 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 448 days in filing the appeal stands condoned.

Main case

The owner and driver of Tractor bearing No. HR 32-5644 (alleged offending vehicle) are in appeal qua the limited issue of the driver being not in possession of valid licence on the basis whereof, the insurance company has been given right of recovery after satisfying the award with the finding that the insured is guilty of violating the terms and conditions of the insurance policy.

The sole submission made by counsel for the appellants is that appellant No. 1, driver of the offending vehicle had a licence Ex. R3, issued by the Licensing Authority, Karnal and valid upto 09.05.2019, authorizing him to drive LMV Tractor/Motorcycle/WG/LMT(NT). Appellant No. 1 was competent to drive the tractor attached with trolly, therefore, insured has not violated any term and condition of the policy constituting a valid defence in favour of the insurer under Section 149 (2) of the Motor Vehicles Act, 1988. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court ***Nagashetty vs. United India Insurance Company Limited, 2001 (4) R.C.R. (Civil) 597*** and ***Mukund Dewangan vs. Oriental Insurance Co. Ltd., 2017(7) Scale 731.***

Counsel for respondent No. 1 has supported the findings of the Tribunal.

Indisputably, driver of the offending vehicle had a licence authorizing him to drive the aforesaid vehicles, reference whereof has been made in para 13 of the award. When the case is examined in the light of aforesaid judgments of Hon'ble the Supreme Court, there is no escape from conclusion that driver of offending vehicle had a valid and effective driving licence authorizing him to drive the vehicle in question, therefore, the insured cannot be held guilty of violating the terms and conditions of insurance policy. As a consequence, findings recorded by the Tribunal in para 13 of the award cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

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

(Rekha Mittal)
Judge

21.11.2018
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