IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 2851 of 2016 (O&M)
Date of decision: 12.07.2018

Sunil Kumar Aggarwal ....*Appellant*

Versus

Vinay and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Sudhir Aggarwal, Advocate
for the appellant

Mr. Punit Jain, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of sustaining injuries in a motor vehicular accident that took place on 02.12.2013.

Counsel for the appellant would inform that he does not press the appeal for enhancement of compensation and would only make submissions with regard to liability of the insurance company to pay compensation though it may be entitled to recovery right against the insured of the vehicle in question.

In view of the above, service of respondents No. 1 to 3 is dispensed with.

The sole submission made by counsel for the appellant is that even if respondents No. 1 to 3 have failed to provide particulars of driving licence, if any, possessed by Vinay, driver of the offending vehicle, the insurance company cannot escape liability to pay compensation to the claimant in discharge of its obligation under the contract of insurance.

Counsel representing the insurance company has supported findings of the Tribunal exonerating the insurance company of liability to pay compensation as respondents No. 1 to 3 before the Tribunal failed to produce on record driving licence/route permit and/or fitness certificate.

As per the settled position in law, the insurance company cannot escape liability to pay compensation even if driver of the offending vehicle was not holding a licence or the licence was found to be fake/invalid. On the other hand, non-possessing a route permit and/or fitness certificate is not a defence available to the insurer under Section 149 (2) of the Motor Vehicles Act, 1988. In the context of invalid/fake/non-possessing of a licence by driver and liability of the insurance company to pay compensation to the claimant, reference can be made to judgments of Hon'ble the Supreme Court ***National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(2) RCR (Civil) 114*** and ***Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) PLR 425***.

In view of the above, I find merit in contention of counsel for the appellant that the insurance company cannot escape liability to pay compensation to the claimant. As respondents No. 1 and 3 before the Tribunal failed to produce on record a copy of driving licence, if any, possessed by Vinay, driver of the offending vehicle or provide its particular to the insurance company for necessary verification, the insurance company shall be entitled to right of recovery against the insured-Sonia Kapoor after payment of compensation to the claimant.

No other point has been raised.

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

(Rekha Mittal)
Judge

12.07.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No