IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6204 of 2013 (O&M)
Date of decision: 05.12.2018

Rajpal and another ... Appellants

Versus

Banwari Lal and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Kulwant Singh, Advocate
for the appellants.

Mr. Sandeep Verma, Advocate
for respondents No.1 to 4.

Mr. Sanjeev Kodan, Advocate
for respondent No.5.

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REKHA MITTAL, J. (Oral)

CM No.25503-CII of 2013

Heard.

Allowed as prayed for. Delay of 151 days in filing the appeal stands condoned.

Main Case

The driver and owner of troalla No.HR-15-G-0131 (alleged offending vehicle) are in appeal against award dated 04.02.2013 passed by the Motor Accidents Claims Tribunal, Rewari whereby issue No.3 (Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident?OPR) has been answered in favour of the insurance company and eventually in para 37 of the award, the insurance company has been given recovery right against the driver and owner of offending vehicle after payment of compensation to the claimants.

Counsel for the appellants would argue that the two reports marked as Ex.R5 prepared by the investigator and Ex.R6 purported to be prepared by the licensing authority have not been proved in accordance with law as no witness was examined by the insurance company to prove the reports with an opportunity to the appellants to challenge correctness of the reports by cross examining the witness, therefore, the Tribunal has seriously erred by relying upon reports Exs.R5 and R6 in order to uphold plea of the insurance company that licence possessed by Rajpal appellant/respondent No.1 was not valid and effective, authorising him to drive vehicle in question on the date of accident. It is prayed that findings of the Tribunal on issue No.3 may be set aside and insurance company may be directed to pay compensation without any right of recovery against the appellants.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue no.3 with the submission that it was an obligation of the appellants to prove that licence possessed by Rajpal was genuine and valid.

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

The insurance company raised a plea that Rajpal, driver of offending vehicle did not have a valid and effective licence which entitles the insurance company to escape liability to pay compensation on account of insured being guilty of violating terms and conditions of the contract of insurance. The Tribunal, in view of pleadings of the parties, framed issue No.3, noticed hereinbefore. Admittedly, a copy of licence possessed by Rajpal was produced on record in order to enable the insurance company to verify the same. The insurance company produced two reports Ex.R5 prepared by Vivek Kumar, Investigator and Ex.R6 purported to be prepared by Licensing Authority, Mathura. However, the insurance company did not examine any witness in order to prove correctness and genuineness of report Ex.R6 and to establish its plea that licence possessed by Rajpal is not valid or effective authorising him to drive the vehicle in question on the day of occurrence. The Tribunal has wrongly held that it was an obligation of respondent No.1/driver of offending vehicle to prove that his licence was valid and effective for driving the trolla. No sooner, the insurance company failed to adduce evidence to prove the reports Exs.R5 and R6, it cannot maintain much less sustain its plea that the insured is guilty of violating terms and conditions of the contract of insurance. As the insurance company failed to discharge onus of issue No.3, it can neither escape its liability to pay compensation by way of indemnification of the insured nor can press for right of recovery after payment of compensation to the claimants. This apart, the Tribunal has allowed right of recovery even against driver of the offending vehicle without appreciating that there is no privity of contract between the insurer and the driver, therefore, there is no occasion for the driver to violate terms and conditions of the contract. In view of the above, findings of the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed. The insurance company shall be jointly and severally liable to pay compensation without any right of recovery. All miscellaneous applications filed by the parties shall be deemed to be disposed of.

05.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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