IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207 FAO-3998-2015 (O&M)

Date of decision: 01.06.2018

RAJESH & ANR ... Appellants

Versus

FUTURE GENERALI INDIA INSURANCE COMPANY LTD & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arun Luthra, Advocate for
Mr. D.K. Tuteja, Advocate for the appellants.

Mr. Rajan Bhargav, Advocate for
Mr. Vishal Aggarwal, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

The driver and registered owner of tractor bearing No.HR-10P-0773 (offending vehicle) are in appeal to assail findings of the Tribunal qua issue No.3 pertaining to driving licence whereby it has been held that as trolley was attached with the tractor and the driver possessed a licence to drive tractor (non-transport), he was not authroised to drive the vehicle in question, amounting to violation of terms and conditions of the insurance policy on the basis whereof, the insurance company has been exonerated of liability to pay compensation.

Counsel for the appellants would urge that controversy raised in the present appeal is squarely covered in favour of the appellants by judgments of Hon'ble the Supreme Court **Nagashetty VS. United India Insurance Co. Ltd., 2001(4) RCR (Civil) 597 and Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731** as gross vehicle weight of the tractor is less than 7500 Kgs and there is nothing on record suggestive of the fact that even weight of the tractor along with trolley is more than 7500 kgs., therefore, the driver was competent to drive

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the vehicle in question.

Counsel for the insurance company is not in a position to defend findings of the Tribunal upholding the plea that Rajesh, driver of the offending vehicle was not holding a valid and effective licence at the time of accident. In this view of the matter, findings of the Tribunal on issue No.3 cannot be allowed to sustain and liable to be set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation by way of indemnification of the insured on the basis of contract of insurance between the insured and the insurer.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

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

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