**In the High Court of Punjab and Haryana at Chandigarh**

**FAO- 4265 of 2015(O&M)**
**Date of Decision:27.8.2018**

**Harbans Lal and another**

**---Appellant**

**vs.**

**Sohan Singh alias Sonu and others**

**---Respondents**

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

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**Present:** Mr. J.P.Sharma, Advocate
for the appellants

Mr. Chander Shekhar Singhal, Advocate
for respondent No.1

Mr. S.S.Sidhu, Advocate
for respondent No. 2

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**Rekha Mittal, J.**

The driver and registered owner of offending vehicle bearing No. HR-58A-8414 are in appeal to assail findings of the Motor Accidents Claims Tribunal, Ambala (in short “the Tribunal”) on issue No. 3 whereby it has been held that driver was not possessing a licence to drive non-transport vehicle, thus, the insured is guilty of violating the terms and conditions of insurance policy. Resultantly, insurance company has been exonerated of liability to pay compensation.

Counsel for the appellants would urge that even if driver was not possessing a valid driving licence, insurance company cannot escape liability to pay compensation to the claimant. It is further argued that the appellants have produced on record another driving licence possessed by Harbans Lal, driver of the offending vehicle by filing application under Order 41 Rule 27 of the Code of Civil Procedure (in short "the Code") seeking permission to produce additional evidence. It is further submitted that findings of the Tribunal on issue No.3 may be set aside and the matter be remitted to the Tribunal for decision on issue No. 3 afresh on the basis of driving licence sought to be produced by way of additional evidence. Counsel would state that the appellants would examine a witness of the concerned licensing authority, if so permitted, to prove correctness and genuineness of driving licence, copy whereof is Annexure A-1 sought to be produced by way of additional evidence.

Counsel representing the insurance company has submitted that a report has been received from District Transport Officer and Public Information Officer, Phek, Nagaland in pursuance of an application under the Right to Information Act, 2005 that the driving licence in question is null/void. However, counsel has conceded that the report received from the authority is not very clear and seems to be contradictory.

Counsel representing the claimant/injured has echoed the arguments advanced by counsel for the appellants that even if the driver was not possessing a valid licence, the insurance company cannot escape liability to pay compensation to the claimant.

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

Be that as it may, it is undisputed position in law that the insurance company cannot escape liability to pay compensation to the claimant even if the insured is guilty of violating the terms and conditions of contract of insurance. In this regard, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Swaran Singh and others 2004 ACJ 1** and **Pappu and others vs. Vinod Kumar Lamba and another 2018(1) PLR 425.** As such, findings of the Tribunal exonerating the insurance company of liability to pay compensation to the claimant/injured cannot be allowed to sustain. The insurance company shall be liable to pay compensation to the claimant but without prejudice to its right to press for right of recovery against the insured in case findings of the Tribunal on issue No. 3 are allowed to sustain.

This brings the court to the issue of driving licence possessed by Harbans Lal, driver of the offending vehicle. A driving licence was produced before the Tribunal which did not authorize the driver to drive a non-transport vehicle. Another licence is sought to be produced before this Court by way of additional evidence purported to be issued by the District Transport Officer, Phek, Nagaland. The verification report produced before the Court and taken on record does not make the picture clear if the licence is invalid on the basis of records maintained in the office of concerned licensing authority. The appellants have taken responsibility to examine a witness from the concerned licensing authority to prove the licence (Annexure A-1). That being so, it would be in the fitness of things if the matter is remitted to the Tribunal for decision of issue No. 3 afresh on the basis of evidence to be adduced by the appellants with regard to correctness/genuineness of licence (annexure A-1)sought to be produced by way of additional evidence. It is clarified that it would be the obligation of the appellants to prove that licence (Annexure A-1) was issued by the concerned licensing authority, by examining a witness on the basis of records. The right of the insurance company to press for recovery against the insured would be subject to outcome of decision on issue No. 3 afresh. It would also be open for the insurance company to raise a plea before the Tribunal as to what are the consequences of possessing two licences by the driver of the same period.

In view of what has been discussed hereinbefore, appeal stands disposed of. The insurance company shall be liable to pay compensation to the claimant without prejudice to its right to press for recovery against the insured, to be decided on the basis of findings on issue No. 3 afresh in the terms indicated hereinbefore. The matter is remitted to the Tribunal for decision on issue No. 3 afresh on the basis of evidence to be adduced by the appellants and thereafter evidence, if any, to be led by the insurance company. Parties through their counsel are directed to appear before the Tribunal on 27.9.2018. The Tribunal is directed to complete entire exercise of decision on issue No. 3 within a period of three months from the parties putting in appearance. The appellants shall be entitled to two effective opportunities for adducing evidence qua driving licence (Annexure A-1).

**(Rekha Mittal)**
**Judge**

**27.8.2018**
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No