IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 6001 of 2014 (O&M)
Date of decision: 30.01.2018

M/s RGVP Energy Sources .... *Appellant*

Versus

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

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

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Present: Mr. Ashish Gupta, Advocate
for the appellant

Mr. Vinod Chaudhari, Advocate
for respondent No. 1

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Rekha Mittal, J.

The appellant - owner of offending vehicle MAHINDRA Pick-up bearing No. HR 68-7870 has filed the instant appeal to assail findings of the Tribunal whereby insurance company has been given recovery right against the insured.

Counsel for the appellant has contended that the insurance company did not produce evidence to discharge onus of issue No. 3 that driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident. However, the said issue was answered in favour of the insurance company on the premise that driver was possessing two driving licences; one issued by the Licensing Authority, Manipur and the other by Licensing Authority, Thanesar. It is argued with vehemence that the mere fact that driver was possessing two licences neither amounts to violation of the terms and conditions of contract of insurance nor does it constitute a defence available to the insurer to escape its liability to pay compensation or press for recovery right against the insured. In support of his contention, he has relied upon judgments of this Court ***'The New India Assurance Co. Limited vs Krishna widow of Ram Pal and others'*** **(FAO No. 17 of 2000, decided on 19.07.2010)** and ***Ved Kaur and others vs Ramphal and others, 2016 (3) Law Herald 2455.***

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal in this regard. In support of his contention, he has referred to judgment of this Court ***Shri Ram General Insurance Co Limited vs. Asha and others (FAO No. 6997 of 2011, decided on 14.03.2014).***

Indisputably, the insurance company did not examine a witness from the concerned Licensing Authority, Manipur or Thanesar to establish its plea that driver of the offending vehicle was not possessing a valid licence on the day of accident.

The question that calls for consideration is '*whether holding of two driving licences issued by different Licensing Authorities would constitute violation of terms and conditions of contract of insurance or a defence available to the insurer under Section 149 (2) of the Motor Vehicles Act, 1988 (in short, the Act)*'. Counsel for the insurance company has failed to invite attention of the Court to any of the clauses of the policy which creates a bar against driver of the vehicle holding more than one licence. He has also failed to point out any provisions under Section 149 of the Act which entitles the insurer to avoid its liability because of the driver possessing more than one driving licence. In this view of the matter, the insurance company cannot derive any advantage to its contention from the judgment in *Shri Ram General Insurance Co. Limited's* case (supra). On the contrary, in *New India Assurance's* case (supra), it has been held that the defence that under the relevant Rules, driver could have only one driving Licence, shall not be a ground for an insurer to plead that there is any violation of the terms of policy. A person obtaining licences from two places may invite certain other action, if Rules so provide but it will not enable the insurer to contend that there is any violation of the terms of the policy. A similar view has been taken by this Court in *Ved Kaur's* case (supra). In this view of the matter, I find merit in contention of the appellant that findings recorded by the Tribunal upholding plea of insurance company that the insured is guilty of violating terms and conditions of policy and consequently giving recovery right against the insured cannot be allowed to sustain and liable to be set aside.

No other point has been raised.

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 against the insured. No order as to costs.

(Rekha Mittal)
Judge

30.01.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No