IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4907 of 2016(O&M)

Date of decision: 31.5.2018

United India Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Kavita Devi and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

None for respondents No.6 and 7.

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REKHA MITTAL, J. (Oral)

The precise issue involved in the present appeal is with regard to findings of the Tribunal on issue No.3 pertaining to driving licence, that reads as follows:-

> "3. Whether the respondent No.1 was not holding valid driving license on the date of alleged accident and whether respondent No.2 has contravened the terms and conditions of the Insurance policy, if so its effect? OPR-3."

Counsel for the appellant-insurance company would argue that counsel for respondents No.1 and 2 before the Tribunal tendered documents including driving licence of Amandeep Ex.R3. The insurance company placed on record photocopy of application under RTI Act dated 03.08.2015 Ex.R4, photocopy of the reminder Ex.R5, postal order and postal receipts Ex.R6 to R8 and reply under RTI in original Ex.R9 along with envelope Ex.R10. As per information received vide Ex.R9, no such records qua licence of Amandeep were found with the authority concerned at Nagaland. It is further argued that in August 2014, the Government of Nagaland issued a notification that driving licences are issued in smart card form and driving licence in booklet form purported to be issued by the licencing authority at Nagaland shall be taken as non-genuine. According to counsel, licence Ex.R3 is shown to be valid w.e.f. 01.05.2011 till the year 2028 and the same is purportedly issued by the licensing authority, Tuensang, Nagaland.

It is further argued that respondents No.1 and 2 before the Tribunal placed on record copy of electronic/smart card licence Ex.R4 valid w.e.f. 02.05.2011 to 01.05.2031 and the same appears to be issued by some other Licensing Authority at Nagaland. In the licences Ex.R3 and R4, address of the driver is different and even the licence numbers do not tally with each other, therefore, the Tribunal by relying upon licence Ex.R4 has wrongly held that driver was possessing a valid and effective driving licence on the day of occurrence and the insured is not guilty of violating the terms and conditions of the insurance policy.

There is no representation on behalf of respondents No.6 and 7, earlier being represented by a counsel.

Indisputably, the insurance company did not examine a witness from District Transport Officer, Teunsang, Nagaland to establish its plea that licence Ex.R3 possessed by driver of the offending vehicle is not valid. The Government of Nagaland called upon the people having driving licences in booklet form to approach the licensing authorities for issuance of driving licences in smart card form. In the case at hand, the driver earlier had a licence in the booklet form which was valid from 01.05.2011. Later, he was issued a licence in smart card form valid from 02.05.2011 till 01.05.2031. The insurance company did not examine a witness along with relevant record either from the authority that issued licence Ex.R3 or Ex.R4. The very fact that the driver was issued a licence in smart card form w.e.f. 02.05.2011 runs contrary to information sought to be relied upon by the insurance company received under the RTI Act. In this view of the matter, it can be safely held that the insurance company has failed to discharge onus of issue No.3 in order to press for right of recovery against the insured.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

MAY 31, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no