IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 846 of 2014 (O&M)
Date of decision: 26.04.2018

The New India Assurance Company Limited .... *Appellant*

Versus

Vinay Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Rajesh Sharma, Advocate
for the petitioner

Mr. S S Swaich, Advocate
for respondents No. 2 and 3

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 03.09.2013 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter to be referred as 'the Tribunal') to the limited extent whereby issue No. 3 "*whether respondent No. 1 was not holding a valid driving licence at the time of accident? OPR*" has been answered against the appellant - insurance company and as a consequence, insurer has been held to be jointly and severally liable to pay compensation by way of indemnification of the insured in discharge of its contractual obligation.

The sole submission made by counsel for the appellant is that as Balbir Singh, driver of Swaraj Tractor No. PB 11K/1482 which was loaded, possessed a driving licence authorizing him to drive motorcycle and Car, he was not competent to drive the vehicle in question, therefore, insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative recovery right against the insured namely Sadhu Singh.

Counsel representing respondents No. 2 and 3, the driver and owner of the vehicle, on the contrary, has supported findings of the Tribunal on issue No. 3 whereby it has been held that Balbir Singh was holding a valid and effective driving licence at the time of accident.

Indisputably, the driver had a licence to drive a Car. There is no evidence led by the insurance company that mechanism of the Car and that of Tractor is different in order to prove that a driver possessing licence to drive a Car cannot drive a Tractor. This apart, insurance company has failed to adduce any evidence that unladen weight of the Tractor exceeded 7,500 kilograms in order to contend that a driver possessing licence to drive a Car could not drive the vehicle in question without endorsement of transport. When the present case is examined in the light of judgments of this Court '***The New India Assurance Company Limited vs Mahender Singh and others', 2010(1) R.C.R. (Civil) 934, 'Ghansham vs. The Oriental Insurance Company Limited', 2103 (2) PLR 376*** and judgment of Hon'ble the Supreme Court in '***Mukund Dewangan vs Oriental Insurance Co. Ltd.', 2017 (7) Scale 731,*** contention raised by counsel for the insurer is not meritorious, thus, untenable.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

No order as to costs.

(Rekha Mittal)
Judge

26.04.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No