

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 22.2.2018

1.

FAO No. 8796 of 2014(O&M)

M/s Yaduvanshi Travels

.....Appellant

VERSUS

New India Assurance Co. Ltd. and others

.....Respondents

2.

FAO No.9942 of 2014(O&M)

M/s Yaduvanshi Travels

.....Appellant

VERSUS

New India Assurance Co. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Satpal Dhamija, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

CM No.23955-CII of 2014 in
FAO No.8796 of 2014

Prayer in this application is for condoning delay of 498 days
in filing the appeal.

Heard.

In view of averments made in the application coupled with there being no serious contest by the respondents, the application is allowed. Delay of 498 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos.8796 and 9942 of 2014

This order shall dispose of FAO Nos.8796 and 9942 of 2014 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from FAO No.8796 of 2014.

M/s Yaduvanshi Travels, registered owner of Bus No.DL1-PB-7439 (offending vehicle), has filed the appeal to assail the award dated 04.03.2013 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Gurmeet Kaur in a motor vehicular accident that took place on 12.02.2010.

Counsel for the appellant has fairly informed that appeal has been preferred to assail findings of the Tribunal on issue No.3 whereby it has been held that Ved Parkash, driver of the offending vehicle, was not possessing a valid licence and consequently the insurance company has been given right of recovery against the driver and owner of the offending vehicle.

Counsel for the appellant has submitted that the appellant has filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for adducing additional evidence to produce on record report (Annexure A-1) by way of additional evidence. It is argued with vehemence that the appellant while engaging Ved Parkash as driver of the offending vehicle not only checked his driving licence but also directed

him to produce a report regarding genuineness of his driving licence from Licensing Authority, Mathura. The driver submitted the report purported to be issued by Licensing Authority, Mathura, therefore, the appellant cannot be held guilty of violating any term and condition of contract of insurance constituting a defence in favour of the insurance company under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is further argued that though the appellant initially caused appearance before the Tribunal but later he was proceeded against ex parte and for that reason he could not appear before the Tribunal to make a statement on oath and prove the document (Annexure A-1).

Counsel representing the insurance company has supported findings of the Tribunal on issue No.3 which are based upon report Ex.RX of Sh. Kanwar Opinder Singh Jaswal (Thakur), Advocate appointed as Local Commissioner by the Tribunal vide order dated 22.05.2012 who recorded statement of concerned official of Licensing Authority, Mathura in respect of driving licence No.15062/MTR/03 in the presence of Sh. Deepak Moudgil, Advocate, counsel for the claimant and Sh. Vikas Sood, Advocate counsel for respondents No.1 and 2 therein and Smt. Shashi Kataria, Advocate, counsel for respondent No.4/insurance company therein. It is further argued that the appellant was represented by a counsel and contested the proceedings throughout till passing of the award but failed to appear in the witness box to establish his plea sought to be raised by filing an application under Order 41 Rule 27 CPC. It is further argued that photostat copy of the report (Annexure A-1) sought to be produced by way of additional evidence is inconsequential as this report is not per se admissible in evidence and the same gets nullified in the face of

proceedings conducted by the Local Commissioner appointed by the Court who recorded evidence in presence of counsel for the appellant, other respondents before the Tribunal and the claimant(s).

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

The Tribunal, on a detailed consideration of report Ex.RX submitted by local commissioner appointed by the Court coupled with testimony of Sunil Kumar, an official from the office of Licensing Authority, Mathura recorded by the local commission has rightly concluded that licence bearing No.15062/MTR/03 was not issued in the name of Ved Parkash son of Sh. Ram Parkash and the same is issued in the name of Bhudev Singh son of Sh. Soharan Singh of Mathura, therefore, licence possessed by Ved Parkash is fake one. As the driver of offending vehicle was not possessing a valid licence and the insured did not appear in the witness box to say as to what inquiries were made by him before engaging Ved Parkash as driver on the bus in question, the Tribunal has rightly directed the insurance company to indemnify the claimants but thereafter its entitlement to seek recovery against the insured/appellant. I would hasten to add that even if application filed by the appellant for additional evidence is allowed and photocopy of report (Annexure A-1) is taken into consideration, it would not advance cause of the appellant to prove that driver was possessing a valid licence. As has been rightly argued by counsel for the insurance company, the document (Annexure A-1) is not per se admissible and required to be proved in accordance with law. Analyzed from any angle, findings recorded by the Tribunal on issue No.3 are liable to be affirmed and ordered accordingly. Resultantly, the

insurance company has rightly been given recovery right against the insured. However, recovery right given against the driver of offending vehicle is set aside for want of privity of contract between the insurer and driver.

For the foregoing reasons, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

FEBRUARY 22, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

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