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

**FAO No. 9559 of 2014(O&M)**

**Date of decision: 3.5.2018**

Majha Pahalwan Transport Carrier ….Appellant

VERSUS

Hardeep @ Pardeep Kumar and others .....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Himanshu Chauhan, Advocate for the appellant.

Mr. Vishal Aggarwal, Advocate for respondent No.1.

Mr. Randeep Singh, Advocate for respondent No.2.

Mr. Ankur Gupta, Advocate for respondent No.3.

**REKHA MITTAL, J.**

The owner/insured of offending vehicle i.e. Truck bearing No.HR58-A-0084 has filed the instant appeal qua the limited issue whereby the insurance company has been allowed recovery right by upholding its plea that driver of offending vehicle was not holding a valid licence.

Counsel for the appellant would urge that the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') committed a serious error rather illegality by relying upon the documents marked as Ex.R5 and R6 to say that driving licence possessed by the driver is fake and the insured is guilty of violating the terms and conditions of policy, entitling the insurance company to have recovery right against the driver and owner of the offending vehicle after payment to the claimants. It is further argued that the insurance company did not examine any witness to prove authenticity of report Ex.R6 with an opportunity to the insured to cross examine the witness concerned, therefore, the report Ex.R6 cannot be used to the advantage of insurance company to uphold its plea that the insured has violated the terms and conditions of insurance policy, therefore, wrongly answered issue No.6 in favour of the insurance company.

Counsel representing the insurance company has supported findings of the Tribunal recorded in para 20 of the award and bestowing recovery right in favour of the insurer against the driver and owner of the vehicle. It is argued that the insured did not adduce any evidence to rebut the report Ex.R6 despite opportunity being available, before the Tribunal.

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

The Tribunal in para 20 has held that as per report Ex.R6, driving licence of respondent No.1 Ex.R1 has been found to be fake as it has not been issued by the Government of Nagaland. Even otherwise, when respondent No.1 belongs to State of Haryana, no proper explanation has been tendered as to why driving licence was obtained from Nagaland and the same creates doubt about authenticity of driving licence.

Indisputably, the insurance company did not examine a witness from the concerned licensing authority to prove correctness and genuineness of report Ex.R6. Counsel for the insurance company has failed to advance any argument that the said report is per se admissible in evidence. In this view of the matter, I have no hesitation to hold that the insurance company has failed to prove report Ex.R6 in accordance with law which has wrongly been made basis for determining issue No.6 in favour of the insurance company. The Tribunal has also taken into consideration that since driver of the offending vehicle is a resident of Haryana, there is no explanation as to how he obtained driving licence from Nagaland. The insurance company did not examine driver of the offending vehicle to seek his explanation as to the circumstances under which he obtained licence from Nagaland though in the claim application he is stated to be resident of Yamunanagar, Haryana. In absence of insurance company adducing any evidence in this regard, factor of present residence of the driver is not sufficient to raise presumption that licence is false. In this view of the matter, I find merit in contention of the appellant that findings of the Tribunal recorded in para 20 of the award and consequently giving right of recovery to the insurer cannot be allowed to sustain and liable to be set aside.

This apart, the Tribunal has allowed recovery right both against the driver and owner of the offending truck. There cannot be any dispute that contract of insurance is between the insurance company and owner/insured. As there is no privity of contract between the driver and the insurance company, neither the driver can be held guilty of violating the terms and conditions of policy nor the insurance company can press for right of recovery against the driver.

For the foregoing reasons, the appeal is partly allowed. Issue no.6 is answered against the insurance company. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimants without any right of recovery. No order as to costs.

**MAY 3, 2018** **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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