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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-9774-2014
Date of decision : 08.01.2018

Oriental Insurance Company Ltd.

... Appellant(s)

Versus

Babli and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Sidhu, Advocate
for the appellant-Insurance Company.

Ms. Kiranjeet Kaur, Advocate for
Mr. T.S. Grewal, Advocate
for respondent No.4.

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AMIT RAWAL, J. (ORAL)

The appellant-Insurance Company is aggrieved of the Award dated 28.08.2014 rendered by the Motor Accident Claims Tribunal, Yamuna Nagar (in short 'the Tribunal') viz-a-viz non-granting of the recovery rights.

Mr. S.S. Sidhu, learned counsel appearing on behalf of the appellant-insurance company has relied upon Annexure A-3 filed along with the appeal, copy of the alleged lease deed entered into by the Gram Panchayat and one Parveen Mittal, who had been given a land on lease for the purpose of carrying a brick kiln. The tractor involved in the accident was bearing registration No.PB-65-J-3921 as stated in the FIR and Claim Petition, but in the Insurance Policy, PB-65-J-7921 and the same was insured with Oriental Insurance Company Ltd./appellant. Respondent No.4, namely, Lal Singh, had been using the tractor-trolley for ferrying the bricks from the brick kiln and the nature of the work was not subservient to the agriculture as the policy was for an "Agricultural Tractor". The FIR lodged by the claimants is also the testimony to the aforementioned fact, but yet the Tribunal has not granted the recovery rights, thus, urges this Court for setting aside the Award, under challenge.

Learned counsel for respondent No.4/owner submits that the Insurance Company has failed to discharge the onus viz-a-viz the aforementioned breach of the terms and conditions of the insurance policy and no suggestion or any question in the cross-examination had been put to the owner. The statement of the claimant would not be sufficient to prove the breach of the terms and conditions of the policy, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Sidhu, for, the purported dispute in the instant appeal is between the Insurance Company and the owner. The onus to prove the breach of the terms and conditions of the policy heavily lies upon the Insurance Company-appellant. Learned Tribunal has examined the testimonies of witnesses *in extenso* and during hearing, also seen by this Court, where except a suggestion, no evidence contrary to what has been stated by the claimants has been proved on record that there had been a deviation from the terms and conditions of the policy. Even the lease deed has not been proved on record. The factum of the accident has been proved on record, therefore, the plea of owner and driver of non-involvement in accident has been belied as there is no cross appeal viz-a-viz to that effect. FIR has been considered by the Tribunal only for the purpose of accident. It has not yet been come on record whether the allegations made in the FIR with regard to the tractor-trolley ferrying the bricks proved on record for the purpose of fastening the liability.

In the absence of any direct and cogent evidence, I am of the view that the appeal of the Insurance Company sans merits. No ground is made out for interference and accordingly, the appeal is dismissed. However, the statutory amount of ₹25,000/- deposited before this Court at the time of filing of the appeal shall be transmitted to the Tribunal for part satisfaction of the compensation awarded by the Tribunal.

(AMIT RAWAL)
JUDGE

08.01.2018
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**