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In the High Court of Punjab and Haryana at Chandigarh

FAO-9989 of 2014(O&M)
Date of Decision:27.4.2018

National Insurance Company Limited

---Appellant

vs.

Ramesh Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr. R.C.Kapoor, Advocate
for the appellant.
None for respondents No. 2 and 3

***

Rekha Mittal, J.

CM No. 27619-CII of 2014

Prayer in this application is for condoning delay of 26 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 26 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 9989 of 2014

The present appeal directs challenge against award dated 2.8.2014 passed by the Motor Accidents Claims Tribunal, Hisar (in short "the Tribunal") whereby compensation has been awarded in favour of Ramesh Kumar Jain on account of injuries sustained by him in a motor vehicular accident that took place

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on 10.7.2012 due to rash and negligent driving of Mahindra Max No. HR-39T/0145, insured with the appellant insurance company.

The sole submission made by counsel for the appellant is that as Rajender, driver of the offending vehicle was not holding driving licence on the day of occurrence which got expired on 4.5.2012 and was renewed on 25.7.2012 and the accident took place on 10.7.2012, the insurance company is entitled to be exonerated of liability to pay compensation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Vidhyadhar Mahariwala and others 2008 ACJ 2860**. Further reference has been made to judgment of this court **India Roadlines vs. Ruldu Ram and others 2009 ACJ 1458.**

There is no representation on behalf of respondents No. 2 and 3, earlier being represented by a counsel.

I have heard counsel for the appellant and perused the paper book particularly the award.

The Tribunal in paras 32 and 33 of the award has dealt with the issue of driving licence possessed by driver of the offending vehicle. Perusal of para 33 makes it evident that driving licence Ex. R3 was renewed on 25.7.2012 whereas the accident had taken place on 10.7.2012. Prior thereto, initially the licence was issued on 20.9.1993 and was valid upto 19.9.1998. The licence was renewed on 29.6.2007 upto 4.5.2012. During the intervening period of more than two months with effect from 4.5.2012 to 25.7.2012, the driver did not possess any driving licence. There is nothing on record suggestive of the fact that the driver applied for renewal of licence within one month of its expiry on 4.5.2012. Had it been so, licence might have been renewed with effect from 4.5.2012, in view of what has been envisaged in Section 15 of the Motor Vehicles Act, 1988 that deals with renewal of driving licences. As the driver did not possess licence on the date of accident, the insurance company is right in its

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submission that the insured is guilty of violating the terms and conditions of the insurance policy. Contention raised by counsel for the appellant is squarely covered by the judgment in **Vidhyadhar Mahariwala and others' case (supra)** wherein the driving licence was initially valid from 15.12.1997 to 14.12.2000 and thereafter from 29.12.2000 to 28.12.2003. It was again renewed from 16.5.2005 to 15.5.2008. Hon'ble the Supreme Court set aside findings of the Tribunal and so also of the High Court that it cannot be said that during the intervening period, the driver was incompetent or disqualified to drive the truck. In this view of the matter, I find merit in contention of counsel for the appellant that driver did not possess a licence on the day of occurrence.

The question that now calls for consideration is whether the insurance company is entitled to be exonerated of liability to pay compensation to the claimants or could only press for right of recovery against the insured.

With due respect, in **Vidhyadhar Mahariwala and others' case (supra)**, Hon'ble the Supreme Court exonerated the insurance company of liability to pay compensation even after noticing judgment of the Court in **National Insurance Company Limited vs. Swaran Singh 2004 ACJ 1.** In a recent judgment by Hon'ble the Supreme Court **Pappu and others vs. Vinod Kumar Lamba and another 2018(1) PLR 425,** Hon'ble the Supreme Court has only given right of recovery to the insurance company in a case where the question of driving licence was answered in favour of the insurance company. I would hasten to add that provisions of the Act are benevolent social legislation enacted with a avowed object to make good the loss the victim family has suffered as the money can do. In this view of the matter, I am of the considered opinion that the insurance company shall only be entitled to right of recovery against the insured after payment to the claimants. Findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation are modified accordingly.

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For the foregoing reasons, the appeal is partly allowed in the terms indicated above. No order as to costs.

(Rekha Mittal)
Judge

27.4.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No