IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1852 of 2017 (O&M)

Date of decision: 26.04.2018

NARESH KUMAR & ANR ... Appellants

Versus

VIJAY KUMAR & ANR ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. G.S. Sandhu, Advocate for the appellants.

Mr. Parveen Sharma, Advocate for respondent No.1.

Ms. Madhu Sharma, Advocate for respondent No.2.

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REKHA MITTAL, J. (Oral)

CM-6136-CII-2017

Heard.

Allowed as prayed for. Delay of 61 days in filing the appeal stands condoned.

Main Case

The present appeal has been preferred by the driver and owner of Mahindra Bolero bearing No.HR-45-B-5251 to assail findings of the Tribunal qua issue No.3 whereby it has been held that driver was not possessing a valid licence and the insurance company is entitled to recovery right against the driver and owner of the offending vehicle.

The Tribunal framed issue No.3 to the following effect:-

> *"Whether respondent No.1 was not having valid and effective driving licence at the time of alleged accident and the vehicle in question was being plied, if so to what effect? OPR"*

The driving licence Ex.R2 was produced which was valid from 09.01.2012 to 08.01.2018. The insurance company, in order to discharge onus of issue No.3 tendered into evidence report of investigator Ex.R5 and letter of Regional Transport Office, Mokokchung at Nagaland Ex.R6 and placed reliance upon documents to say that licence Ex.R2 had not been issued by the concerned licensing authority.

Indisputably, the insurance company did not examine a witness of the concerned licensing authority by following procedure in accordance with law and even the investigator who has submitted the report Ex.R5 along with letter Ex.R6 was not examined before the Tribunal. As per the settled position in law, it was the obligation of the insurance company to discharge onus of issue No.3 by establishing its plea that licence possessed by the driver is not valid or the same is fake. The two documents placed on record by the insurance company are not at all sufficient to discharge onus of issue No.3, particularly in the circumstances that the documents which are marked as exhibits are not per se admissible in evidence. In this view of the matter, I have no hesitation to say that reliance upon documents Ex.R5 and R6 by the Tribunal to answer issue No.3 in favour of the insurer is highly misplaced and misconceived, therefore, findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside. Resultantly, issue No.3 is answered against the insurance company and in favour of the claimants. As a natural consequence, insurance company shall be jointly and severally liable to pay compensation to the claimants without any right of recovery.

The learned Tribunal has given right of recovery in favour of the insurance company and against the driver and owner of the offending vehicle. Admittedly, there is no privity of contract between the insurer and driver of the vehicle, therefore, insurance company cannot press for right of recovery against the driver even if the insured has violated any terms and conditions of the insurance policy constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

No order as to costs.

Statutory amount of Rs.25,000/- be remitted to the Tribunal for payment to the claimants.

26.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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