

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 1232 of 2018(O&M)

Date of Decision: 27.2.2018

Makhan Singh

---Appellant

versus

National Insurance Company Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. L.S.Sidhu, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against award dated 10.8.2017 passed by the Motor Accidents Claims Tribunal, Sangrur (in short “the Tribunal”) whereby compensation has been awarded on account of injuries sustained by Malkiat Singh in a motor vehicular accident that took place on 15.04.2016.

Counsel for the appellant (registered owner of the offending vehicle) would contend that the appeal has been preferred only to assail findings of the Tribunal on issue No. 4 whereby it has been held that as driving licence possessed by the driver did not contain an endorsement authorizing him to drive oil tanker carrying hazardous goods, insured is guilty of violating terms and conditions of insurance policy constituting a defence in favour of the insurance company, therefore, the insurer is entitled to have recovery right against the insured after indemnifying the claimants.

Counsel for the appellant would argue that as per plea of the claimant, he was going on foot from Sangrur to oil depot situated at Mehlan road, Sangrur and the alleged offending vehicle came from back side and struck against the claimant. It is further argued that this fact is sufficient to establish that at the time of accident, oil tanker was not carrying oil/hazardous material, therefore, absence of endorsement in terms of Section 14 of the Motor Vehicles Act, 1988 (in short “the Act”) cannot constitute a defence in favour of the insurance company to press for recovery rights against the insured.

I have heard counsel for the appellant, perused the paper book particularly the award but find that the appeal sans merit and deserves outright rejection.

The driver of the offending vehicle was *ex parte* before the Tribunal, therefore, there was no such plea raised before the Tribunal that the vehicle in question was empty or was not carrying oil at the time of unfortunate occurrence in which the injured sustained injuries. The mere fact that as per plea of the claimant, he was going from Sangrur to oil depot situated at Mehlan road and the vehicle in question followed him is not at all sufficient to assume that the tanker was empty or was not carrying oil/hazardous material. The plea sought to be raised before this Court is a factual plea, required to be raised and proved before the Tribunal. The driver or owner of the vehicle were the best persons to know if the tanker did not carry oil at the time of occurrence. Under Section 106 of the Indian Evidence Act, it is an obligation of a party to prove the circumstances to his special knowledge. In this view of the matter, factual controversy raised for the first time before this Court cannot be accepted.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

27.2.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No