In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 19.3.2018

FAO No. 1425 of 2018(O&M)

Reliance General Insurance Company Limited

---Appellant

versus

Kaushal Devi and others

---Respondents

FAO No. 1426 of 2018(O&M)

Reliance General Insurance Company Limited

---Appellant

versus

Sakila and others

---Respondents

FAO No. 1480 of 2018

Reliance General Insurance Company Limited

---Appellant

versus

Meena Begum and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjeev Kodan, Advocate
for the appellant- insurance company

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1425, 1426 and 1480 of 2018 as identical questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from FAO No. 1425 of 2018.

Counsel for the appellant-insurance company would urge that the appeal has been filed to assail findings of the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (in short "the Tribunal") on issue No. 3 "Whether the insured has violated terms and conditions of the insurance policy, as alleged. If so, its effect?OPR-3". It is argued with vehemence that though the Tribunal has held in para 51 that respondent No. 1 therein was possessing a fake driving licence at the time of accident but still the Tribunal has not exonerated the insurance company of liability to pay compensation nor bestowed right of recovery on the insurer against the insured for the aforesaid failure. It is further argued that Ajay Kumar, registered owner of the vehicle did not raise plea in the written statement originally filed that he had tested driving skills of the driver but the said fact was incorporated by way of amendment allowed by the Tribunal. In addition, it is argued that testimony of Ajay Kumar is not worthy of credence and reliance as the same suffers from various inconsistencies and contradictions, therefore, the Tribunal has seriously erred by placing reliance upon testimony of Ajay Kumar and negated plea of the insurance company that the injured is guilty of violating the terms and conditions of the insurance policy.

I have heard counsel for the appellant, perused the paper book particularly award dated 2.2.2018.

Indisputably, the Tribunal on the basis of testimony of Chamkaur Singh, Data Entry Operator, O/o DTO. Ludhiana has held that licence possessed by Karnail Singh was not issued by the concerned licensing authority and the same is fake. However, in view of discussion made in para 53 of the award and by relying upon judgments of Hon'ble the Supreme Court **Pepsu Road Transport Corporation vs. National**

Insurance Company, 2013 (4) RCR(civil) 273 (SC) and **New India Assurance Company Limited, Agartala Branch, represented by its Deputy Manger vs. Sri Biswajit Das, 2017 AAC 880,** the Tribunal has held that the driver, owner and insurer of the offending vehicle are jointly and severally liable to pay compensation.

The plea of the registered owner to amend the written statement was allowed by the Tribunal. Counsel for the appellant has not advanced any arguments to assail correctness of the order passed by the Tribunal allowing amendment of the written statement. As soon as the Tribunal has allowed amendment of the written statement and the said order has not been set aside in appropriate proceedings by a competent court of law, amendment would relate back to the date of filing of the written statement. Under the circumstances, appellant cannot derive any advantage to his contention merely because a particular fact has been incorporated in the written statement by way of amendment.

This brings the Court to testimony of Ajay Kumar RW4. He tendered into evidence his duly sworn affidavit Ex. RW4/A by way of examination in chief. Perusal of cross examination of the witness (copy whereof has been supplied by counsel for the appellant during course of hearing) makes it evident that there is no serious contradiction in the testimony of Ajay Kumar to discard or disbelieve his testimony that he had tested driving skills of the driver and had seen the driving licence to ply heavy transport vehicle before the driver was engaged on truck bearing No. HR- 65-6215 in the year 2012. This apart, there is nothing on record suggestive of the fact that since 2012 till the occurrence in question, Karnail Singh, driver of the offending vehicle was involved in any accident. When the facts and circumstances of the present case are examined in the light of judgments of Hon'ble the Supreme Court relied upon by the Tribunal, I do not find an error much less illegality in conclusions drawn by the Tribunal negating plea of the insurance company that the insured is guilty of violating terms and conditions of the insurance policy for want of valid driving licence with the driver or the insurer being entitled to press for right of recovery against the insured. In this view of the matter, findings recorded by the Tribunal on issue No. 3 are liable to be affirmed and ordered accordingly.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

19.3.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No