**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1486 of 2018 (O&M)
Date of Decision: May 24, 2018

Delhi Baroda Road Carriers Pvt. Ltd. ...Appellant

Versus

Manish Dahiya and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Satyaveer Singh, Advocate
for the appellant.

Mr.Mayank Mathur, Advocate
for respondent No.2 – Insurance Company.

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HARINDER SINGH SIDHU, J.

The present appeal has been filed by the owner against the award of the Ld. Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal'), whereby, respondent No.2 – Insurance Company has been exonerated from liability.

Respondent No.1 filed a claim petition through his father claiming compensation for injuries suffered by him in a motor vehicular accident which took place 19.9.2014. It was stated in the claim petition that on 19.9.2014, the claimant was riding his motorcycle bearing No.PB-19B-9389 on the way to Gomach Choraha from Jattari, PS Tappal, District Aligarh (UP) in connection with his Company's job. The motorcycle was hit from behind by Tata truck bearing No.HR-38N-2107 (hereinafter referred to as 'the offending vehicle'), which was being driven at a high speed and in a rash and negligent manner. FIR under Section 279, 338, 427 IPC was registered in connection with the accident against respondent No.3. Report under Section 173 Cr.P.C. was filed and he was facing trial before the Court of CJM, Aligarh (UP).

The Ld. Tribunal concluded that it was established that the accident was caused by rash and negligent driving of the offending vehicle by respondent No.3. The Ld. Tribunal awarded compensation as under :

Loss of current income for six months (from the date of accident till the filing of the petition (18000x6)	Rs.1,08,000/-
Loss on account of permanent disability. (18000x12x16)	Rs.34,56,000/-
Medical Expenses	Rs.26,56,962/-
Attendant Charges	Rs.50,000/-
Transportation Expenses	Rs.50,000/-
Special Diet	Rs.50,000/-
Loss of amenities of life	Rs.1,00,000/-
Future Medical Expenses	Rs.1,00,000/-
Compensation for shock, pain,sufferings and trauma	Rs.1,00,000/-
Loss on account of shortening of life	Rs.50,000/-
Total	**Rs.67,20,962/-**

The Ld. Tribunal held that respondent No.3 was having a valid and effective driving licence at the time of accident, which was proved on record as Ex.R2. It was also proved that the vehicle was registered in the name of the present appellant and its Registration Certificate was proved as Ex.R3. However, the Ld. Tribunal held that the insurance policy Ex.R1, which was placed on record pertained to a different insurance company (IFFCO Tokio General Insurance Co. Ltd.), whereas the offending vehicle was insured with Oriental Insurance Company Ltd (Respondent No. 2

herein). Further the Insurance Policy also did not cover the period when the accident took place. The said Insurance Policy was issued on 27.10.2014 and the period of its validity was from 26.10.2014 to midnight of 25.10.2015. The accident having taken place on 19.09.2014, the Ld. Tribunal held that there was no evidence to prove that on the date of the accident, the offending vehicle was insured with respondent No.2 – the Oriental Insurance Company Ltd.

The Ld. Tribunal further held that though respondent No.2 - the Oriental Insurance Company Ltd. had given particulars regarding the policy No.215000/31/2014/8250 with validity from 26.10.2013 to 25.10.2014, but no effort had been made by the claimant or by the appellant and respondent No.2 to prove the same on record to show that on the date of accident, the offending truck was insured with respondent No.2. Accordingly it was held that no liability could be fastened on it. The appellant (owner) and respondent No. 3 (the driver) were held jointly and severally liable for the payment of the compensation.

Ld. Counsel for the appellant has contended that the finding of the Tribunal on the issue of liability is wholly misplaced. He argued that Insurance Policy which was valid and effective on the date of the accident as also the cover note were duly exhibited before the Tribunal as Ex.R1/A but the Tribunal has erred in not taking note of the same.

Considering the aforesaid submission of the Ld. Counsel for the appellant, vide order dated 5.4.2018, Mr. Mayank Mathur, Ld. Counsel for respondent No.2 – Insurance Company was requested to verify as to whether the policy Ex.R-1/A (which had also been placed on record with the present appeal as Annexure P-1) had been issued by respondent No.2 – Insurance Company and whether it was valid on the date of the accident. In response thereto, Mr.Mathur, on instructions, states that the Insurance Policy had been issued by respondent No.2 company and was valid on the date of the accident.

In view of this statement, it has to be held that the offending vehicle was duly insured with respondent No.2 and the said Policy was valid on the date of the accident. The Ld. Tribunal has already held that respondent No.3, the driver of the offending vehicle, possessed a valid driving licence, which was proved as Ex.R2. The vehicle was also registered in the name of the appellant and the Registration Certificate was proved as Ex.R3. In view thereof, the finding of the Tribunal that liability could not be fastened on the Insurance Company – respondent No.2 cannot sustain.

Accordingly, this appeal is allowed. The finding of the Tribunal exonerating respondent No. 2 of liability is set aside. It is held that the respondent No.2 – Oriental Insurance Company is liable to indemnify the appellant in respect of the amount awarded.

Ld. Counsel for the Insurance Company has argued that the amount of compensation awarded by the Tribunal is excessive. He argued that as the Award of the Tribunal was not against respondent No.2, no appeal challenging the quantum of compensation could have been filed by the Insurance Company. And as the claimant has not filed any appeal for enhancement, even a cross-appeal by the Insurance company challenging the quantum would not have been maintainable.

Be that as it may, as the issue of quantum is not under consideration in the present appeal no opinion thereon is being expressed. It would be open to the Insurance Company to adopt any appropriate proceedings as may be available to them to assail the quantum

Disposed of.

May 24, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No