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

**FAO No.2982 of 2018(O&M) &
XOBJC-247-CII of 2018
Date of decision: 22.11.2018**

Shri Ram General Insurance Co. Ltd. …..Appellant

VERSUS

Omwati and others .....Respondents

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Ashwani Arora, Advocate for cross objectors.

*****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.2982 of 2018 and cross objections No.247-CII of 2018 as these have emerged out of the same award dated 12.02.2018 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been assessed on account of death of Rakesh in a motor vehicular accident that took place on 16.11.2016.

Counsel for the appellant, by referring to order of notice of motion dated 02.07.2018, would urge that the Tribunal has denied an opportunity to the insurance company to examine Head Constable Rameshwar Dass, an official witness summoned through process of the Court who had failed to cause appearance despite service. Another submission made by counsel is that the insurance company filed an application for summoning Head Constable Rameshwar Dass and Vijay

Kumar @ Vijya Kumar but the Court only allowed summoning of witness at Sr. No.1 namely Sh. Rameshwar Dass but did not pass an order with regard to Vijay Kumar @ Vijya Kumar mentioned at Sr. No.2, in para 2 of the application. It is further submitted that the award passed by the Tribunal may be set aside and the matter be remitted to the Tribunal with an opportunity to the appellant to examine Head Constable Rameshwar Dass and Vijay Kumar @ Vijya Kumar, alleged driver of offending vehicle motorcycle bearing No.CH-50-T-9309. He would state that the insurance company would procure presence of Vijay Kumar @ Vijya Kumar at its own responsibility on the date to be fixed by the Tribunal for evidence of the appellant-insurer.

Counsel representing the claimants has not disputed the factual contention raised by counsel for the appellant but would submit that Vijay Kumar @ Vijya Kumar being one of the respondents cannot be summoned or examined by the insurance company being co-respondent of the insurance company in the application for grant of compensation, particularly in the circumstances that he is contesting the proceedings and is represented by a counsel.

Be that as it may, it is undisputed position of the case that on the basis of application filed by the insurance company, the Tribunal permitted the insurance company to deposit diet money of HC Rameshwar Dass and issued summons of that witness through process of the Court. The witness was served but did not honour summons issued by the Court. Despite a police official having failed to cause appearance on service, the Tribunal did not bother to procure his presence through coercive process. On the contrary, the Court shut right of the insurance company to examine that witness to contest plea of the claimants with regard accident being the result of rash and negligent driving of the offending vehicle. In this view of the matter, I find merit in contention of the appellant that the award passed by the Tribunal is liable to be set aside with an opportunity to the insurance company to examine HC Rameshwar Dass as a witness whose presence would be secured by the Tribunal in accordance with law. The matter with regard to examination of Vijay Kumar @ Vijya Kumar is left open to be decided by the Tribunal in view of contentions to be raised by counsel for the parties. However, in case Vijay Kumar @ Vijya Kumar is allowed to be examined, the appellant-insurance company would ensure presence of the witness at its own responsibility.

In view of what has been discussed hereinbefore, the appeal is allowed. Award dated 12.02.2018 passed by the Tribunal is set aside and the matter is remitted to the Tribunal for decision afresh on the basis of materials already on record and evidence to be adduced by the insurance company. The Tribunal shall put best efforts to conclude the proceedings within a period of 4 months from the parties putting in appearance on 19.12.2018. In the meanwhile, insurance company shall not initiate any proceedings for recovery of compensation already paid to the claimants.

Since the appeal filed by the insurance company has been allowed and the matter has been remitted to the Tribunal for decision afresh, cross objections filed by the claimants have rendered infructous and disposed of accordingly.

NOVEMBER 22, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no