IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1885-1997 (O&M)
Date of decision: 02.11.2019

Rohtash Kumar and another ….Appellants

Versus

Darbara Singh and another ….Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Satya Vir Singh Yadav, Advocate for
Mr. Ram Chander, Advocate
for the appellants.

Mr. V.K. Garg, Advocate
for respondent No.2.

REKHA MITTAL, J.(ORAL)

The present appeal directs challenge against award dated 27.05.1996 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') to the limited extent whereby the insurance company has been exonerated of liability to pay compensation, in view of findings recorded in para 33 of the award pertaining to driving licence.

The Tribunal has noticed that the driver had a licence authorizing him to drive car or jeep i.e. Light Motor Vehicle but he was actually driving a heavy vehicle i.e. Tanker No. HR-37/1074. By relying upon judgments **Manohar Jamatmal Sindhi and another Vs. Ranguba and others, 1994 ACJ 1280** and **Balli Singh Vs. Smt. Sushil Singal and others, 1985 PLR 225**, the insurance company was absolved of liability to pay compensation on the premise that the offending vehicle was driven by a person not holding a valid licence to drive heavy vehicle.

Counsel for the appellants would argue that appellants have filed application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 seeking permission to produce driving licence of Rohtash Kumar by way of additional evidence. It is argued that in view of document sought to be produced by way of additional evidence, Rohtash Kumar was duly licensed to drive Heavy Transport Vehicle, therefore, the insured has not violated the terms and conditions of insurance policy in respect of driving licence.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal that Rohtash Kumar was not duly licensed to drive the offending vehicle which is a Heavy Transport Vehicle as licence possessed by him authorizes him to drive a car or jeep, a Light Motor Vehicle. Counsel would apprise the Court that appellants have not produced on record the original licence sought to be produced by way of additional evidence and even photocopy thereof has not been brought on record and a document appended with the application is only a true copy. It is further submitted that document appended with the application for additional evidence cannot be allowed to be produced by way of additional evidence in absence of producing the original before the Court.

Counsel for the appellants, in response to a query, has expressed his inability to produce original document, true copy whereof was appended with the application for additional evidence. Since the appellant has neither produced photocopy nor the original, he cannot seek any benefit of application for producing additional evidence.

On the contrary, counsel for the insurance company has produced photocopy of the document supplied to him for the purpose of verification, taken on record. Perusal of the document would reveal that licence was issued in the year 1999 whereas the accident in question took place in 1994. The appellants have failed to produce driving licence, if any, possessed by Rohtash Kumar authorizing him to drive a transport vehicle in the year 1994. In the given circumstances, contention of the appellants to assail findings of the Tribunal on the question of driving licence, is patently misconceived and rejected.

The insurance company has been exonerated of liability to pay compensation. Even if licence possessed by driver of offending vehicle was found to be fake or ineffective, the insurance company, at best, can press for right of recovery against the insured after payment of compensation to the claimants. Counsel for the insurance company would inform that owner of the vehicle has already paid compensation to the claimants and their claim stands satisfied. In the given circumstances, no useful purpose would be served by modifying the award, imposing liability upon the insurance company to compensate the claimants and thereafter recover the same from the insured/owner of the vehicle in question.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed. As the appeal has been decided on merits, applications for condonation of delay in filing and re-filing the appeal are of academic relevance only.

NOVEMBER 2, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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