In the High Court of Punjab and Haryana at Chandigarh

FAO- 3543 of 2019(O&M)
Date of Decision: 31.5.2019

Bharti AXA General Insurance Company Limited

---Appellant

versus

Harsimran Sekhon and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ankur Gupta, Advocate
for the appellant

***

Rekha Mittal, J.

CM No. 12603-CII of 2019

Prayer in this application is for condoning delay of 15 days in filing the appeal.

Heard.

Allowed as prayed for. Delay of 15 days in filing the appeal stands condoned.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against award dated 12.2.2019 passed by the Motor Accidents Claims Tribunal, Mansa (in short "the Tribunal") whereby compensation has been assessed on account of death of Sukhdeep Kaur that took place on 3.1.2014.

Counsel for the appellant would inform that the present appeal has been filed to press only right of recovery in favour of the insurance company on the premise that the vehicle was plied in violation of terms and conditions of the insurance policy as there is no route permit of the vehicle in question i.e. Van No.HR-26D-9176 that belongs to PBN Public School,Sector-17 behind IFFCO Chowk, Gurgaon. Counsel would argue that a specific plea was raised in the written statement that all the defences available under Sections 147 and 149 of the Motor Vehicles Act, 1988 (in short "the Act") are being raised. It is further stated that the Tribunal framed issue No.4 but did not advert to the question of vehicle being plied without a route permit.

Undisputedly, the insurance company did not take a specific plea that the vehicle in question needed a route permit or the same being plied without a permit.

The Tribunal framed issue No. 4, reads thus:-

> "Whether respondent no. 1 was not holding a valid and effective driving licence and whether Van No. HR-26D-9176 was plied without valid Registration Certificate and fitness certificate at the time of alleged accident and thereby violated the terms and conditions of the insurance policy? OPR"

There is nothing on record suggestive of the fact that the insurance company ever pressed for framing of issue in respect of permit or route permit or modification of issue No. 4 to raise the question of permit. Perusal of findings of the Tribunal under issue No. 4 makes is evident that no such issue of permit/route permit was raised even during the course of hearing.

Counsel, in response to a query, would inform that the insurance company never moved an application calling upon the owner to produce permit/route permit in respect of the vehicle in question. As the insurance company never raised a specific plea with regard to the vehicle being plied without a permit/route permit, it cannot be permitted to raise such a factual controversy for the first time in appeal.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

31.5.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No