IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 11.12.2019

FAO No.423 of 2011 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Rajinder Kaur and others ... Respondents

FAO No.1959 of 2014 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Prabhjit Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. JS Chatrath, Advocate
for the insurance company (FAO No.423 of 2011).

Mr. RC Gupta, Advocate
for the insurance company (FAO No.1959 of 2014).

None for the respondents.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.423 of 2011 and 1959 of 2014 as these have emerged out of the same accident that took place on 23.03.2009.

FAO No.423 of 2011 has been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') to assail award dated 09.10.2010 whereby compensation has been assessed on account of death of Sharanjit Singh in the aforesaid accident whereas the other appeal has been filed by the insurance company against award dated 14.01.2014 awarding compensation in respect of damage to Indica car bearing No.PB-65-A-3141.

Counsel for the insurance company in FAO No.423 of 2011 would argue that since offending vehicle was being plied without a permit, insured is guilty of violating the terms and conditions of policy constituting a defence in favour of the insurer and as such, the insurance company should be conferred with right of recovery against the insured after payment of compensation to the claimants. Another submission made by counsel is that since the accident is head on collision between the offending vehicle and Indica car aforesaid driven by Sharanjit Singh, contributory negligence is liable to be attributed to the deceased and the claimants are not entitle to compensation to the extent of negligence attributable to him.

Counsel representing the insurance company in FAO No.1959 of 2014 would argue that the insurance company examined Raj Kumar RW2 to prove that insured did not get a permit for the vehicle or to say there was no valid permit on the date of accident i.e. 23.03.2009.

There is no representation on behalf of respondents No.2 to 4, earlier represented by a counsel.

Perusal of award dated 09.10.2010, subject matter of FAO No.423 of 2011, would reveal that the Tribunal framed issue No.3, reads thus:-

> Whether the insurer had breached terms and conditions of the policy, if so its effect?OPR.

Under issue No.3, the Tribunal has noticed contentions of counsel for the insurance company (respondent No.4 therein) on the question of route permit Ex.R5. The contention raised by counsel for the insurance company is that truck had permit to ply in the States of Rajasthan, Chandigarh and Delhi but the accident took place in the State of Punjab near Police Station Bhawanigarh, District Sangrur but there was no route permit to enter State of Punjab and the same amounts to violation of the insurance policy. The Tribunal decided question of route permit by relying upon judgment of Madras High Court **National Insurance Co. Ltd. Vs. T. Elumalai and another, Vol.II 1990 ACC 335**. Counsel for the insurance company has failed to make convincing arguments that non-possessing of a route permit is a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988. In this context, reference can be made to judgments of this Court **Ashok Kumar and another Vs. Anil Kumar and others, FAO No.4552 of 2016 along with connected cases, decided on 14.11.2017** and **Suresh Kumar and another Vs. Reliance General Insurance Co. Ltd. and ors., FAO No.4764 of 2016, decided on 05.09.2019.** In this view of the matter, I find myself unable to be persuaded with the submissions of counsel for the insurance company that insurance company can press for right of recovery for want of a permit to enter State of Punjab.

So far as plea of the insurance company that contributory negligence is liable to be attributed to the deceased, the mere fact that accident was head on collision *ipso facto* is not sufficient to attribute negligence to the deceased. Counsel for the insurance company has failed to point out any material on record on the basis whereof the deceased can be condemned for failing to take reasonable care to avoid the accident. In this view of the matter, contention of the insurance company in this regard is not meritorious. Since findings of the Tribunal recorded in award dated 09.10.2010 on the question of violation of terms and conditions of policy have been affirmed, the same would constitute *res judicata* in case decided vide award dated 14.01.2014 as well as the appeal preferred by the insurance company in this regard in the said case.

The claimant raised a claim for payment of compensation of Rs.5 lakh but the Tribunal has awarded Rs.1,24,000/-.

The sole submission made by counsel for the insurance company is that claimant examined Ajay Kumar, Engineer CW2 approved valuer and surveyor who submitted report Ex.C13 with regard to market value of the car to the tune of Rs.1,24,000/- at the time of accident. It is submitted that Tribunal has not extended any benefit to the insurance company or adjusted the amount of salvage out of market value of the car while determining compensation to the tune of Rs.1,24,000/-.

There is no representation on behalf of respondent No.1-Prabhjit Singh who, at one point of time appeared in person.

Taking into consideration the market value of the car at the time of accident coupled with the claimant being entitle to get some amount on sale of wreckage of the car, a sum of Rs.10,000/- shall be deducted from the market value to assess quantum of compensation available to the claimant. Accordingly, compensation assessed by the Tribunal is reduced to the extent of Rs.10,000/-. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

11.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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