IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 FAO No.1223 of 2016 (O&M)

Date of decision: 10.05.2019

The Gharaunda Saraswati Coop. Transport Society Ltd. ... Appellant

Versus

Iffco Tokio General Insurance Company Ltd. and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gaurav Jaglan, Advocate for
Mr. Vikram Singh, Advocate for the appellant.
Mr. Neeraj Khanna, Advocate for the insurance company.
None for respondents No.2 to 6.
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REKHA MITTAL, J. (Oral)

CM No.3795-CII of 2016

Heard.

Allowed as prayed for. Delay of 564 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 28.04.2014 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Rajesh Kumar in a motor vehicular accident that took place on 12.09.2012.

The instant appeal has been preferred by the Gharaunda Saraswati Coop. Transport Society Ltd., registered owner of offending vehicle i.e. bus No.HR-45-A-1160.

Counsel for the appellant would fairly inform that the appeal has been preferred to assail only findings of the Tribunal recorded in para 24 of the award, on the basis whereof the insurance company has been left at liberty to recover the amount of compensation from driver and owner of offending vehicle after discharging liability towards the claimants. It is argued that the appellant has filed an application under Order 41 Rule 27 CPC seeking permission to place on record the documents (Annexure A1 and A2) namely stage carriage permit and certificate of fitness but till date the insurance company has not submitted any response on the basis of verification, despite availing several opportunities. It is further argued that even otherwise non-possessing of route permit or deviation therefrom or non-production of a fitness certificate is not a defence available to the insurance company under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, findings of the Tribunal allowing right of recovery in favour of the insurer cannot be allowed to sustain.

Counsel representing the insurance company would state that he had sent the documents for verification by the insurance company.

Perusal of findings recorded in para 24 of the award makes it evident that the Tribunal had raised an adverse inference against respondents No.1 and 2 therein for failure to produce route permit and fitness certificate and for that reason, the insurance company has been given recovery right against driver and owner of the offending vehicle. Recovery right given against the driver cannot stand the test of judicial scrutiny for want of privity of contract between the insurer and driver.

Counsel for the insurance company is not in a position to support findings of the Tribunal that non-production of route permit or fitness certificate is a defence available to the insurer under Section 149 (2) of the Act. The insurance company has not responded qua correctness of two documents sought to be produced by way of additional evidence, despite allowing opportunity since 28.09.2017 onwards. In view of the above, findings recorded by the Tribunal in para 24 of the award and giving right of recovery to the insurer cannot be allowed to sustain and accordingly set aside.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

10.05.2019 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No