IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224 FAO No.2476 of 2015 (O&M)
Date of decision: 04.02.2019

Sh. Sukhbir Singh and another ... Appellants

Versus

Sh. Ram General Insurance Company Ltd. and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Mohan S. Rana, Advocate for
Mr. Sanjeev K. Panwar, Advocate for the appellants.
Mr. Abhinav Singla, Advocate for
Mr. Sanjeev Goyal, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

CM No.7702-CII of 2015

Prayer in this application is for condonation of delay of 693 days in filing the appeal.

In view of averments made in the application supported by an affidavit of appellant No.1-Sukhbir Singh, application is allowed and delay of 693 days in filing the appeal is condoned.

Main Case

The driver and owner of offending vehicle i.e. tractor bearing No.HR-26AL-6155 are in appeal to assail award dated 15.02.2013 passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been assessed on account of death of Karan in a motor vehicular accident that took place on 24.08.2010 and the insurance company has been given right of recovery against the driver and insured/owner of the vehicle after payment of compensation to the claimants.

The appeal against respondents No.2 and 3 was ordered to be dismissed on 13.09.2018, as such, the limited issue that survives for consideration is the right of recovery given in favour of the insurance company-respondent No.1.

Counsel for the appellants would argue that the insured has not violated any terms and conditions of the insurance policy, therefore, the insurance company has wrongly been held entitle to recover compensation after payment to the claimants.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.3 whereby it has been held that Sukhbir Singh, driver of the offending vehicle was not possessing a valid licence and the insurance company is entitle to have right of recovery against the driver and owner of the offending vehicle.

I have heard counsel for the parties, perused the paper book particularly the award impugned.

The Tribunal has blamed the insured for violating terms and conditions of insurance policy on two counts i.e. there was a water tanker attached with the tractor so the tractor was used for a purpose other than prescribed in the policy. The second ground is that no licence of Sukhbir Singh has been produced on record, therefore, the Tribunal drew an adverse inference against respondents No.1 and 2 that driver did not possess any licence.

Be that as it may, counsel for the appellants is not in a position to challenge the factual findings recorded by the Tribunal that driving licence of Sukhbir Singh has not been produced on record and an inference can be drawn that he did not possess a licence. In the appeal, no application has been filed by the appellants for adducing additional evidence to produce driving licence of Sukhbir Singh. Since respondents No.1 and 2 before the Tribunal did not produce licence, if any, possessed by Sukhbir Singh, no error much less illegality can be found in drawing an adverse inference against the private respondents before the Tribunal that the vehicle in question was driven by Sukhbir Singh without having any licence. As the offending vehicle was driven by Sukhbir Singh without having any licence, that clearly amounts to violation of terms and conditions of the insurance policy constituting a defence in favour of the insurer under Section 149(2) of the Act. In this view of the matter, recovery right given in favour of the insurance company against the insured cannot be faulted with. However, in absence of any privity of contract between the insurer and driver, there is no question of violation of any terms and conditions of contract of insurance by the driver nor the insurance company can press for right of recovery against the driver on this count. That being so, findings of the Tribunal giving right of recovery against driver of the offending vehicle cannot be allowed to sustain and accordingly set aside. In the given circumstances, this Court need not to go into the second question of vehicle being used for a purpose other than prescribed in the policy.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Recovery right given in favour of the insurance company against driver of the offending vehicle is set aside. However, recovery right allowed against the insured is affirmed.

04.02.2019
ashok

(REKHA MITTAL)
JUDGE

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