IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226 FAO-1700-2016 (O&M)

Date of decision: 09.07.2019

ORIENTAL INSURANCE COMPANY LIMITED ... Appellant

Versus

SOMA RANI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate for the appellant.
Mr. Sandeep Jasuja, Advocate for respondents No.1 to 4.
Mr. SS Sidhu, Advocate for respondent No.6.
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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 21.11.2015 passed by the Motor Accidents Claims Tribunal, Fazilka to the limited extent whereby the appellant insurance company has been directed to pay a sum of Rs.1 lakh as per Ex.RX, the insurance policy obtained by Mohinder Singh (since deceased) that contains special contract covering the risk of injury or death by payment of special premium.

Counsel for the appellant would urge that the respondents/claimants filed the application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (in short 'the Act') for grant of compensation in respect of death of Mohinder Singh in a motor vehicular accident due to rash and negligent driving of offending Maruti Alto 800, detailed in issue No.1 framed by the Tribunal. It is further argued that the Tribunal assessed compensation to the tune of Rs.15,93,900/- to be paid by the driver cum owner and insurer of aforesaid Maruti Alto car. It is submitted that the Tribunal did not frame any issue with regard to entitlement of the claimants to get compensation from the appellant insurance company but in the relief clause dealt with in para 15 of the judgment, the Tribunal has held that the primary responsibility will be of respondent No.2 with whom offending vehicle was insured and including the limited liability of respondent No.3 to the extent of Rs.1 lakh only as per Ex.RX. It is further argued that compensation payable to the claimants under special contract between the insurer and insured was neither sought to be enforced before the Tribunal nor otherwise can be enforced before the said fora. In addition, it is argued that the claimants have failed to prove that Mohinder Singh was holding valid licence.

Counsel representing the respondents, on the contrary, has supported findings of the Tribunal recorded in para 15 of the award.

Be that as it may, the claimants invoked the provisions of Section 166 of the Act for claiming compensation in respect of injuries sustained by Mohinder Singh in a motor vehicular accident that took place because of rash and negligent driving of alleged offending vehicle driven and owned by respondent Mangal Singh and insured with the New India Insurance Co. Ltd. There is nothing on record suggestive of the fact that the claimants sought to enforce contractual obligation of the appellant insurance company on the basis of policy Ex.RX obtained by Mohinder Singh (since deceased) nor the Tribunal framed any issue in this regard or address this question during the course of discussion with an opportunity to the appellant to refute that contention of the claimants. In the given circumstances, findings of the Tribunal in para 15 fastening liability to pay a sum of Rs.1 lakh upon the appellant insurance company cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms. However, nothing stated in this order shall cause prejudice to the claimants to take recourse to appropriate remedy before a competent fora for claiming compensation from the appellant insurance company on the basis of policy Ex.Rx.

(REKHA MITTAL)
JUDGE

09.07.2019
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No