IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 18.10.2019

FAO 2741 of 2016 (O&M)

Rajesh and another ....*Appellants*

Versus

The New India Assurance Company Limited and another ....*Respondents*

FAO 2869 of 2016 (O&M)

Rajesh and another ....*Appellants*

Versus

The New India Assurance Company Limited and another ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: None for the appellants

Mr. Amit Kundra, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from FAO No. 2741 of 2016.

The appellants (driver and owner) of offending vehicle Truck No. HR-56C-0023 have filed the appeal to assail findings of the Tribunal on issue No. 3 pertaining to driving licence on the basis whereof, the insured is held guilty of breaching terms and conditions of insurance policy and the insurance company has been allowed right of recovery against the insured after payment of compensation to claimants.

Perusal of findings of the Tribunal in para 36 of award reveals that licence possessed by appellant Rajesh, driver of the offending Truck was issued by Licensing Authority, Tuensang, Nagaland. The insurance company examined Gulzar Singh (RW2) Investigator of New India Assurance Company Limited to prove report Ex.R9, obtained by said Gulzar Singh under the Right to Information Act. The insurance company did not examine a representative of concerned Licensing Authroity along relevant records with an opportunity to claimants and insured to cross examine him, to discharge onus of issue No. 3 that licence possessed by Rajesh was not issued by the concerned Licensing Authority. The insurance company also did not call upon Rajesh to appear in the witness box to explain as to under what circumstances, he obtained licence from Nagaland though he is otherwise resident of village Arainpura, District Karnal. In this view of the matter, it can safely be held that the insurance company failed to discharge onus of issue No. 3 to establish that licence possessed by Rajesh was not issued by the concerned authority or the same can be treated as fake.

On the contrary, the appellants have filed an application for additional evidence to place on record verification of driving licence of Rajesh and verification report. Taking into consideration the verification report sought to be produced by the appellants coupled with discussion made hereinbefore, I find it difficult to sustain findings of the Tribunal that licence in question was not issued by the concerned Licensing Authority or driver was not duly licensed to drive the vehicle in question. In this view of the matter, findings of the Tribunal on issue No. 3, holding the insured guilty of breaching the terms and conditions of policy on the basis whereof, right of recovery has been bestowed upon the insurance company against the insured cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation to claimants without any right of recovery.

In view of what has been discussed hereinbefore, the appeals are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

18.10.2019
Mohan Bimbra

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