IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

238 **Date of decision: 05.07.2019**

FAO No.2744 of 2016 (O&M)

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Rajpati and others ... Respondents

FAO No.2745 of 2016 (O&M)

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Manoj Kumar and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate and
Ms. Priyadeep, Advocate for the insurance company.
None for the driver and owner.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2744 and 2745 of 2016 as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from FAO No.2744 of 2016.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on the question of driving licence possessed by Pardeep, driver of trolla bearing No.HR-46B-6266, the offending vehicle. It is argued that the insurance company produced document Ex.R7 certified document obtained under Right to Information Act, 2005 wherein it was recorded that no record was available pertaining to the said driving licence with Transport Authority, Nagaland. It is further argued that as licence possessed by the driver was fake in view of report Ex.R7, the insured is guilty of breaching the terms and conditions of policy and the insurance company is entitle to press for right of recovery against the insured after payment of compensation to the claimants.

There is no representation on behalf of respondents No.3 and 4, despite notice.

Perusal of para 23 of the award reveals that the insurance company sought to rely upon document Ex.R7 with regard to some information received by Ajay Sharma RW1 under Right to Information Act, 2005. The insurance company did not examine a witness of the concerned authority either by summoning him through process of the Court or by getting a Commission appointed for the purpose. There was no opportunity with the insured to cross examine the witness in the light of relevant record maintained in the office of concerned licensing authority. In the given circumstances, the Tribunal has rightly refused to rely upon Ex.R7 to accept contention of the insurance company that licence possessed by the driver was fake and the insured is guilty of breaching the terms and conditions of policy constituting defence under Section 149(2) of the Motor Vehicles Act, 1988. That being so, I do not find an error much less perversity in findings of the Tribunal on issue No.4.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed.

05.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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