IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228 FAO No.2874 of 2016 (O&M)

Date of decision: 20.11.2019

KULDEEP SINGH ... Appellant

Versus

KRISHNA DEVI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Naveen Batra, Advocate for the appellant.
Mr. Radhey Shyam Sharma, Advocate for the insurance co.
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REKHA MITTAL, J. (Oral)

CM-10525-CII-2016

Heard.

In view of averments made in the application supported by an affidavit of applicant Kuldeep Singh coupled with serious implications of the award allowing recovery right against driver of offending vehicle on the question of route permit, the application is allowed and delay of 1019 days in filing the appeal is condoned.

Main Case

Challenge in the present appeal has been directed against award dated 20.04.2013 passed by the Motor Accidents Claims Tribunal, Rupnagar to the limited extent whereby the insurance company has been given right of recovery against the appellant on the basis of findings recorded on issues No.3 and 4, taken up jointly.

The Tribunal framed issues No.3 and 4, read thus:-

> 3. Whether the respondent No.1 was not holding any valid and effective driving licence on the date of accident?OPR
>
> 4. Whether the petition is not maintainable as alleged in preliminary objection?OPR.

Findings of the Tribunal in para 18 of the award are to the effect that offending vehicle was not having any valid route permit and copy of route permit Ex.R5 showed that the same does not pertain to the relevant time when the accident took place. Firstly, the Tribunal did not frame an issue if the vehicle was plied without any route permit or otherwise.

Secondly, non-possessing of a route permit is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). This apart, the vehicle was registered in the State of Punjab and accident in question also took place within jurisdiction of State of Punjab. In the given circumstances, findings of the Tribunal, basis of giving right of recovery in favour of the insurance company cannot be allowed to sustain in exercise of appellate as well as revisional jurisdiction of the Court. Moreover, driver of the vehicle is not privy to the contract of insurance between the insurer and insured, therefore, question of his violating the terms and conditions of insurance policy does not arise. The Tribunal committed a patent mistake by failing to appreciate that in absence of privity of contract between the insurer and driver, the driver cannot be fastened with liability to pay compensation amount to the insurance company on account of violation of terms and conditions of insurance policy. Analysed from any angle, findings of the Tribunal giving right of recovery in favour of the insurance company are grossly erroneous and accordingly set aside.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

20.11.2019
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No