IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5236 of 2015(O&M)

Date of decision: 15.5.2019

Bajaj Allianz General Insurance Co. Ltd. …..Appellant

VERSUS

Harjit Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

None for respondent No.4.

*****

REKHA MITTAL, J.

CM No.11631-CII of 2016

Heard.

The appeal has been preferred by the insurance company only qua the question of driving licence and to press for right of recovery against the insured. As such, legal representatives of respondent No.3 (driver of offending vehicle) need not be heard in the matter.

Accordingly, the application stands disposed of.

FAO No.5236 of 2015

Challenge in the present appeal has been directed against award dated 28.04.2015 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been assessed on account of death of Kewal Singh in a motor vehicular accident that took place on 25.01.2013.

Counsel for the appellant- insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on question of liability to pay compensation where-under the insurance company has been fastened with liability to pay compensation despite the fact that driver of offending vehicle did not possess licence. It is informed that the Tribunal has rejected plea of Bhajan Singh, owner of offending vehicle that he had handed over the motorcycle to Harpal Singh and Harpal Singh without his (Bhajan Singh's) consent or authority handed over the same to Baljinder Singh, driver of the vehicle at the time of occurrence.

There is no representation on behalf of respondent No.4, earlier being represented by a counsel.

The insurance company raised a plea that Baljinder Singh – respondent No.1 was not having valid and effective driving licence at the time of accident. The Tribunal framed issue No.6 in this regard. However, while deciding issues No.5 and 6 jointly, the Tribunal has rejected plea of the owner that Harpal Singh handed over the motorcycle to Baljinder Singh without consent of Bhajan Singh. The Tribunal has held in para 16 of the award that the story has been woven later to escape liability. At the same time, the Tribunal has held that insurance company cannot be exonerated from liability as it has been proved that the offending vehicle was insured with Bajaj Allianz General Insurance Company. Reference has been made to judgment of this Court **National Insurance Company Ltd. Vs. Balwinder Kaur and others, 2011 (1) Law Herald 470**.

Hon'ble the Supreme Court in a recent judgment **Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) PLR 425** has held that the onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time. In the case at hand, plea of the insured with regard to his having given motorcycle to Harpal Singh and Harpal Singh handed over the same to Baljinder Singh without his consent has been rejected by the Tribunal. There is nothing on record suggestive of the fact that the insured has preferred an appeal or cross objections to challenge these findings recorded by the Tribunal. The insured did not produce driving licence, if any, possessed by Baljinder Singh, driver of the offending vehicle at the time of occurrence. No sooner, the insured failed to produce a copy of driving licence of the driver or providing its particulars to the insurance company, the insured fails to discharge his primary obligation in compliance with judgment in **Pappu and others case** (supra). Since the insured failed to produce driving licence of Baljinder Singh, there was no occasion with the insurer to seek its verification. On the contrary, an adverse inference is liable to be drawn that Baljinder Singh did not possess licence to drive the motorcycle, thus, the insured is guilty of violating the terms and conditions of policy. Hence, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants, in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(2) RCR (Civil) 114**. In this view of the matter, findings of the Tribunal recorded in paras 16 and 17 of the award are modified in the aforesaid terms.

In view of what has been discussed hereinbefore, the appeal is partly allowed.

MAY 15, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no