**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

FAO No. 8034 of 2014 (O&M)
Date of Decision: January 22, 2019.

Dharam Vir Bansal @ Dharm Veer Bansal

..........APPELLANT.

VERSUS

Ashish Kumar and another

........RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. K.B. Raheja, Advocate
for respondent No. 1.

Mr. M.B.Jain, Advocate
for respondent No. 2.

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<u>SURINDER GUPTA, J.(Oral)</u>

Heard.

This appeal has been filed by claimant Dharam Vir Bansal @ Dharm Veer Bansal against the award dated 02.04.2014 passed by the Motor Accident Claims Tribunal, Chandigarh (for short, the Tribunal), whereby he was allowed compensation of ₹4,63,293/- for the injuries suffered by him in a motor vehicle accident with motor cycle bearing registration No. HP-40B-2194.

Learned counsel for the appellant has argued that the appellant has filed appeal on two scores, firstly seeking enhancement of compensation and secondly challenging the order of the Tribunal exonerating the insurance company to pay the compensation amount. He has, however , confined his submission only for allowing the claimant to recover compensation awarded to him from insurer of the offending vehicle and not pressed the ground of appeal seeking enhancement of compensation.

As the question raised in this appeal is only qua the liability of insurer and insured, the detail facts of the case are being skipped for the sake of brevity.

The Tribunal while assessing liability to pay the amount of compensation observed in para 38 and 39 of the award as follows:-

> *"38. The question which now crops up relates to the liability of the insurance company. Learned counsel for respondent No.2 has argued that respondent No.1 did not discharge the onus place on him by law by bringing on record copy of his driving license. Therefore, the insurance company was to be absolved from the liability.*
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> *39. Though, mere absence of driving license is not in itself a defence available to insurer against the insured or third party, to avoid its liability towards the insured, the insurer has to prove that insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the conditions of the policy regarding use of the vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time. In the present case, the driver and the insured are same person and the driver, admittedly, was not holding a driving license on the date of accident. Therefore, the insurance company has sufficiently discharged its burden and proved that the insured was guilty of negligence in fulfilling the conditions of the policy. The insurance company is to be absolved from liability and only respondent No.1 is liable to pay the compensation. This issue is determined accordingly.*

Learned counsel for the appellant has argued that even if it be believed that the driver of the offending vehicle was not holding any driving licence or his licence was fake, still the insurer cannot be absolved from its liability to pay the amount of compensation to the claimant. At the most, the insurer can be allowed right to recover the compensation amount paid by it from the insured.

Learned counsel for respondent No. 2-insurance company has argued that the insured was driving motor-cycle in violation of terms of insurance policy, as such, the Tribunal has rightly absolved the insurer to pay the amount of compensation.

The legal proposition that where the insured has violated terms of insurance policy, the insurer is liable to pay the amount of compensation with right to recover the same from insured and law to this effect as settled by the Hon'ble Supreme Court in case of ***National Insurance Company Vs. Swaran Singh, 2004(2) RCR 114,*** has not been disputed. The Tribunal while absolving the insurer from its liability to pay the amount of compensation has not looked into the above settled proposition of law.

In view of the above discussion, the award passed by the Motor Accident Claims Tribunal, Chandigarh is modified to the extent that the claimant shall be entitled to recover the amount of compensation from the insurer i.e. IFFCO Tokio General Insurance Company-respondent No.2 and the insurance company shall have the right to recover the amount of compensation paid to claimant from owner of the offending vehicle. It is, however, made clear that right of the insurer to recover the amount of compensation from owner of the offending vehicle shall be subject to the order that may be passed in connected appeal bearing FAO No. 9310 of 2014 filed by the owner.

Disposed of accordingly.

(SURINDER GUPTA)
JUDGE

January 22, 2019.
Jyoti-II

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No