IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 18.03.2019

FAO No.5452 of 2016 (O&M)

Gurdeep Singh and another ... Appellants

Versus

National Insurance Company Ltd. and others ... Respondents

FAO No.5457 of 2016 (O&M)

Hem Lata and another ... Appellants

Versus

Gurdeep Singh and others ... Respondents

FAO No.5546 of 2016 (O&M)

Gurdeep Singh and another ... Appellants

Versus

National Insurance Company Ltd. and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vishal Gupta, Advocate for appellants-driver and owner.
None for the insurance company.
None for the claimants.
****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5452, 5457 and 5546 of 2016 as these have emerged out of the same award dated 07.04.2016 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of deaths of Jhalak aged 7 years and Hom

Bahadur in a motor vehicular accident that took place on 07.02.2014.

FAO Nos.5452 and 5546 of 2016 have been filed by the driver and registered owner of offending vehicle i.e. HP-12-8695 whereas the other appeal has been preferred by claimants seeking enhancement of compensation.

FAO Nos.5452 and 5546 of 2016

Counsel for the appellants would inform that the appeals have been preferred to assail findings of the Tribunal on the question of driving licence, on the basis whereof the insurance company has been given right of recovery against the appellants after payment of compensation to the claimants. It is argued that Yajuvender Bassi, registered owner of the vehicle appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW1/A to state on oath that at the time of employing Gurdeep Singh as driver on the truck in question, he had seen the driving licence Ex.R4 possessed by him and also got tested his driving skills, therefore, the insured cannot be held guilty of breaching the terms and conditions of policy constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **United India Insurance Co. Ltd. Vs. Lehru, 2003(2) RCR (Civil) 278** and **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273.** In addition, it is argued that Gurdeep Singh, driver of the offending vehicle also appeared in the witness box and stated that he stayed in the State of

Nagaland for 5 to 7 years and went there in 2009 but the Tribunal has neither considered testimonies of the witnesses nor adverted to the fact that insurance company did not adduce any evidence to prove that licence Ex.R5 issued by the State of Nagaland was not actually issued by the state authority or the same is invalid.

There is no representation on behalf of the insurance company, earlier being represented by a counsel.

The Tribunal, by taking into consideration that respondents No.1 and 2 therein did not produce any document to prove that at the time of issuance of licence Ex.R5, the driver was working in State of Nagaland has upheld plea of the insurance company that original licence Ex.R5 issued by the State of Nagaland is not valid, therefore, renewal of licence by an authority at Panchkula would not enure to benefit of the driver and owner of the offending vehicle. The Tribunal has failed to examine testimony of registered owner of the vehicle that he had seen licence possessed by the driver issued by Licensing Authority, Panchkula at the time he was engaged as driver on the truck. When testimony of the registered owner is examined in the light of judgments in **Lehru's case (supra)** and **Pepsu Road Transport Corporation's case (supra)**, its difficult to sustain findings of the Tribunal that the insured is guilty of violating the terms and conditions of policy and the insurance company can press for right of recovery against the insured after payment of compensation to the claimants.

Indisputably, the insurance company did not examine a witness from the concerned licensing authority of Nagaland to prove that licence Ex.R5 was not issued by the said authority. Analyzed from any angle, findings of the Tribunal on the question of driving licence are patently erroneous and faulty, thus, cannot be allowed to sustain and accordingly set aside. As a natural consequence, right of recovery given in favour of the insurance company against driver and insured is set aside. This apart, no recovery right can be given against the driver for want of privity of contract between the insurer and driver.

In view of what has been discussed hereinbefore, the appeals are allowed. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation to the claimants.

FAO No.5457 of 2016

The Tribunal has awarded Rs.4,70,000/- in respect of death of a child aged seven years. When the case is examined in the light of judgment of Hon'ble the Supreme Court **Puttamma and others Vs. K.L. Narayan Reddy and another, 2014(1) ACJ 526,** there is no justification for allowing compensation more than what has been assessed by the Tribunal.

In view of the above, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

18.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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