IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244 FAO-5697-2016 (O&M)

Date of decision: 02.04.2019

JOGINDER SINGH AND ANR ... Appellants

Versus

CHOTTE LAL AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashish Gupta, Advocate for the appellants.
Mr. Vinod Gupta, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

Heard.

Notice of motion to the insurance company.

Mr. Vinod Gupta, Advocate accepts notice on behalf of the insurance company.

Challenge in the present appeal has been directed against award dated 29.02.2016 passed by the Motor Accidents Claims Tribunal, Jalandhar whereby compensation has been assessed on account of death of Mattelesh Kumar @ Kali @ Parmal in a motor vehicular accident that took place on 16.06.2009.

Counsel for the appellants would inform that the appeal has been preferred to assail findings of the Tribunal on the question of driving licence on the basis whereof recovery right has been given in favour of the insurance company after payment of compensation to the claimants.

Counsel for the appellants would argue that Joginder Singh had a valid licence to drive heavy transport vehicle w.e.f. 28.03.2003 to 27.03.2006. He deposited fee for renewal of licence on 26.07.2007 but because of inaction of the licensing authority's officials/officers, licence earlier possessed by the driver was not renewed and as such, the appellants cannot be condemned on the premise that driver was not possessing licence on the day of occurrence i.e. 16.06.2009. To substantiate his contention with regard to deposit of fee and obligation of the department concerned to process the cases for renewal of driving licence, he has heavily relied upon the facts elicited in cross examination of Charandeep Singh RW2 examined

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before the Tribunal.

Counsel representing the insurance company, on the contrary, would argue that as Joginder Singh did not have a licence to drive heavy transport vehicle subsequent to 27.03.2006 when his earlier licence got expired, he was not competent to drive the vehicle in question, therefore, the Tribunal has rightly held that the driver did not possess a licence on the day of occurrence authorising him to drive the vehicle in question, thus, the insured is guilty of committing breach of terms and conditions of insurance policy entitling the insurance company to have right of recovery after payment of compensation to the claimants.

I have heard counsel for the parties, perused the paper book particularly the award.

Be that as it may, it is undisputed position of the case that on expiry of earlier licence valid from 28.03.2003 to 27.03.2006, Joginder Singh did not possess a licence authorising him to drive a heavy transport vehicle. It is also not disputed that the vehicle in question is a heavy transport vehicle as it is trolla.

The question that calls for consideration is whether the insured can be heard to say that he is not guilty of violating the terms and conditions of insurance policy because Joginder Singh had deposited the fee for renewal of licence but the case was not processed by the authority concerned. The answer, at the outset, appears to be in the negative. The mere fact that fee for renewal of licence had been deposited ipso facto does not amount to renewal of licence or authorization to the driver to drive the vehicle in question. As per case of the appellants, fee was deposited after about a year when the licence got expired on 27.03.2006. The occurrence in question took place on 16.06.2009 after about 2 years of deposit of fee for renewal. If the appellants did not bother to ensure that Joginder Singh is duly licensed authorsing him to drive the vehicle in question, it cannot be heard to say that the insured has not violated the terms and conditions of insurance policy constituting defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988. As such, I do not find an error much less perversity in findings of the Tribunal upholding plea of the insurance company that Joginder Singh did not possess a valid licence to

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drive the vehicle in question on the day of occurrence and the insured is guilty of violating the terms and conditions of insurance policy. In this view of the matter, recovery right given in favour of the insurance company against the insured (appellant No.2) cannot be faulted with. However, in absence of privity of contract between the insurer and driver of the vehicle, insurance company is not entitle to right of recovery against driver of the offending vehicle and accordingly recovery right given against appellant No.1 is set aside.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

02.04.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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

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