IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

FAO 6947 of 2015 (O&M)
Date of decision: 18.12.2019

Bedpal ....*Appellant*

Versus

HDFC EURGO General Insurance and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rajender Kumar, Advocate
for the appellant

None for the insurance company

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Rekha Mittal, J. (Oral)

CM 21691 CII of 2015

Prayer in this application is for condoning delay of 175 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 175 days in re-filing the appeal stands condoned.

Main case

Challenge in the present appeal has been directed against award dated 03.11.2014 passed by the Motor Accidents Claims Tribunal, Palwal (in short, 'the Tribunal') to the limited extent of challenging findings of the Tribunal on the question of driving licence on the basis whereof, the insurance company has been given right of recovery against driver and legal representatives of Nathi Singh (since deceased), owner of offending tractor No. UP 81C 5146.

The sole submission made by counsel is that as the appellant was holding license to drive light motor vehicle, valid from 27.04.2006 to 26.04.2026, issued by the Licensing Authority, Aligarh (UP), he was duly licensed to drive the vehicle in question, therefore, there is no violation of terms and conditions of insurance policy by the insured.

There is no representation on behalf of the insurance company despite service.

Perusal of findings of the Tribunal, in para 24 of the award, would reveal that there is reference to driving license Ex.R1 valid from 27.04.2006 to 26.04.2026 for driving motorcycle without gear and LMV. The verification with regard to driving license is marked as Ex.R2. The Tribunal has held that as driver was driving tractor attached with trolley and there is no endorsement with regard to competence to drive tractor-trolley, he was not holding a valid and effective driving licence. Finding of the Tribunal, in this regard, is grossly erroneous and cannot sustain. Since driver had a licence to drive light motor vehicle, he was competent to drive the tractor attached with trolley. In this context, reference can be made to judgments of Hon'ble the Supreme Court ***Nagashetty vs United India Insurance Company Limited 2001 (4) R.C.R. (Civil) 597*** and ***Mukund Dewangan vs. Oriental Insurance Co. Ltd., 2017(7) Scale 731.*** In this view of the matter, findings of the Tribunal on the question of driving license and giving right of recovery to the insurance company cannot be allowed to sustain and accordingly set side. This apart, in absence of privity of contract between the insurance company and driver of offending vehicle, there is no question of the driver having violated terms and conditions of policy, entitling the insurance company to press for right of recovery against the driver. Examined from any angle, recovery right given in favour of the insurance company is against the settled position in law and set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

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

(Rekha Mittal)
Judge

18.12.2019
Mohan Bimbra

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