IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

FAO 6085 of 2016 (O&M)
Date of decision: 24.09.2019

United India Insurance Company Limited ....*Appellant*

Versus

Aadesh Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Ram Avtar, Advocate
for the appellant

Mr. Amit Arora, Advocate
for respondent No. 3

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against award dated 16.05.2016 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short, 'the Tribunal') to the limited extent that Tribunal has not decided issue No. 3 pertaining to driving licence, reads thus:-

> *"3. Whether respondent No. 1 was having valid and effective driving licence at the time of accident? OPR*-1"

Counsel for the parties are *ad idem* that copy of driving licence of Satish *alias* Nanu has already been produced before the Tribunal.

Notice of motion order dated 05.10.2016 reads as follows:-

> *"Counsel for the appellant submits that the Motor Accidents Claims Tribunal, Bhiwani (in short, the Tribunal) has not recorded any findings*

> *qua issue No. 3 while deciding issue Nos. 2 to 4 jointly.*
>
> *Notice of motion to respondent No. 3 only, returnable for 13.12.2016."*

A casual reading of findings of the Tribunal on issues No. 2 to 4, taken up together for discussion and decision makes it evident that the Tribunal has neither decided issue No. 3 while disposing of issues No. 2 to 4 nor otherwise. However, issue No. 3 has been wrongly drafted by the Tribunal and onus thereof has been placed upon respondent No. 1 therein namely driver of offending vehicle. It is plea of the insurance company that driver of offending vehicle did not have a valid driving licence at the time of accident and it is obligation of the insurance company to prove the said fact in order to establish that insured is guilty of breaching the terms and conditions of policy. Accordingly, issue No. 3 is recast as follows:-

> "*Whether respondent No. 1 was not duly licensed at the time of accident?OPR3*

The matter is remitted to the Tribunal for deciding the aforesaid issue afresh on the basis of materials already on record and additional evidence, if any, to be adduced by the insurance company and thereafter providing an opportunity to the insured to lead evidence.

The parties through their counsel are directed to appear before the Tribunal on 18.10.2019.

(Rekha Mittal)
Judge

24.09.2019
Mohan Bimbra

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