IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 6395 of 2016 (O&M)
Date of decision: 21.05.2019

Balwan Singh ....*Appellant*

Versus

M/s Bajaj Allianz General Insurance Co Ltd. and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gagandeep Singh, Advocate
for the appellant

Mr. Vishal Aggarwal, Advocate
for respondent No. 1

Mr. Rajeev Dev Sharma, Advocate
for respondent No. 2

Mr. Dinesh Mahajan, Advocate
for respondent No. 3

Mr. Suvir Dewan, Advocate
for respondent No. 4

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Rekha Mittal, J. (Oral)

CM 21374 CII of 2016

Prayer in this application is for condoning delay of 584 days in 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 584 days in filing the appeal stands condoned. Disposed of accordingly.

Main case

The registered owner of offending vehicle i.e. Gas Tanker No. HR 38 H 6597 is in appeal against award dated 02.12.2014 passed by the Motor Accidents Claims Tribunal, Pathankot (in short, 'the Tribunal') to the limited extent of findings on issue No. 3, on the basis whereof, the insurance company has been given right of recovery against the insured.

Counsel for the appellant would argue that this Court vide order dated October 22, 2016, had directed the appellant to supply a copy of report produced on record to the insurance company for necessary verification from the Licensing Authority, Jammu. He would further state that a copy of the report was supplied but till date, the insurance company has not submitted any verification report.

Another submission made by counsel is that there is no dispute between the parties that on the date of occurrence, driver of offending vehicle had a licence authorizing him to drive a transport vehicle and, as such, even if there was no endorsement authorizing the driver to drive a vehicle carrying inflammable/hazardous goods, the insurance company cannot be heard to say that the insured is guilty of breaching terms and conditions of the insurance policy constituting a defence under Section 149 (2) of the Motor Vehicles Act, 1988 (in short, 'the Act').

Counsel for the insurance company, on the contrary, would argue that he has not received verification report till date. However, it is argued that in absence of endorsement authorizing the driver to drive a vehicle carrying inflammable/hazardous goods, the insured is guilty of violating the terms and conditions of insurance policy and, for that reason, the Tribunal has rightly allowed right of recovery in favour of the insurance company.

Counsel for the appellant has produced the original driving licence and perusal thereof would reveal that licence bearing No. 8183/MVD/RTOJ was originally issued by Regional Transport Officer, Jammu (J&K), valid with effect from 18.12.2001 to 17.12.2020 for Motor Cycle without gear, Motorcycle with gear and Light Motor Vehicle only. There is an endorsement with regard to renewal upto 28.03.2009 bearing No.17904/MVD/J. Another endorsement has been made bearing No.11137/DHR/MVD/J authorizing to drive vehicle carrying dangerous or hazardous goods upto 26.10.2008. There is also endorsement that makes reference to driving licence No. 8183/MVD/J and No. 11608/MVD/J renewed upto 11.11.2012. Keeping in view that the original licence was valid upto 2020 and there are endorsements with regard to renewals for a period of three years each, it can safely be held that the driver was authorized to drive a transport vehicle. The said fact has been duly recorded in Annexure P3, a verification report prepared by the Regional Transport Officer, Licensing Authority, MVD, Jammu (J&K), available on record. Not only this, the insurance company examined Alam Din, Head Clerk, Transport Nagar, RTO Office, Narwal, Jammu (J&K) (RW1). He would depose on the basis of summoned record qua driving Licence No. 8183/MVD/J issued on 18.12.2001 valid upto 17.12.2020 for motorcycle, LMV only and produced document Ex.RW1/A. He would further depose that he has not brought any other record pertaining to the endorsement made in the aforesaid driving licence. Perusal of statement of Alam Din (RW1) would reveal that the insurance company has failed to establish that the endorsements made on the original driving licence either do not pertain to authorizing the driver to drive a transport vehicle or the endorsement with regard to transport vehicle was not renewed upto 11.11.2012. On the contrary, reading of Annexure P3 substantiates plea of the insured that the driver was authorized to drive heavy goods vehicle upto 11.11.2012 and as such, he was competent to drive a transport vehicle on the date of accident that took place on 18.09.2011. Further, endorsement authorizing the driver to drive vehicle carrying dangerous or hazardous goods was valid only upto 26.10.2008 and the same has not been extended thereafter meaning thereby that there was no endorsement authorizing the driver to drive a vehicle carrying gas on the unfortunate day of occurrence i.e. 18.09.2011.

The controversy with regard to driving licence not containing endorsement authorizing the driver to drive a vehicle carrying inflammable/hazardous goods, in compliance with the provisions of Section 14 (2) (a) of the Motor Vehicles Act, 1988 is squarely covered in favour of the appellant in view of judgment of this Court ***National Insurance Company Limited vs Harbans Kaur and others*** (FAO No. 1210 of 2014, decided on 26.03.2018). In this view of the matter, it is difficult to sustain findings of the Tribunal that Joginder Singh, driver of offending vehicle did not have a valid or effective licence to drive the vehicle in question on the date of accident. That being so, the insured cannot be blamed to have breached terms and conditions of the insurance policy on the basis whereof, the insurance company can press for right of recovery against the insured. As such, findings of the Tribunal on issue No. 3 are set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

In view of what has been discussed hereinabove, the appeal is partly allowed. The insurance company shall be jointly and severally liable to pay the compensation to the claimant without any right of recovery.

(Rekha Mittal)
Judge

21.05.2019
Mohan Bimbra

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