IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 FAO-6490-2016 (O&M)
Date of decision: 15.07.2019

M/s Parkash Ashal Ting and Toll Highway ... Appellant

Versus

The New India Assurance Co. Ltd. and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gagneshwar Walia, Advocate for the appellant.
Mr. Vinod Gupta, Advocate for the insurance company.
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<u>REKHA MITTAL, J. (Oral)</u>

CM No.22047-CII of 2016

Heard.

Allowed as prayed for. Delay of 61 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against award dated 18.05.2016 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Nitesh in a motor vehicular accident that took place on 21.11.2014.

The instant appeal has been filed by M/s Parkash Ashal Ting and Toll Highway, registered owner of vehicle bearing No.RJ-23-GA-3834 to challenge the award to the limited extent that insurance company has been exonerated of liability to pay compensation in view of findings in para 20 of the award pertaining to driving licence. It is argued that the Tribunal in para 20 has noticed that photocopy of driving licence is available on record but respondents No.1 and 2 therein did not tender any document in evidence. It is further argued that photocopy of driving licence was available for the insurance company to make necessary verification but the same was not done but still the insurance company has been exonerated of liability to pay compensation and as a consequence, liability to pay compensation has been fastened upon the driver and owner of the vehicle. It is argued with vehemence that as the insurance company has failed to discharge onus of issue No.3, neither the insurance company can be exonerated of liability to pay compensation nor can even press for right of recovery against the insured.

Counsel representing the insurance company has not disputed that a copy of driving licence of Girraj Sharma, driver of offending vehicle was produced before the Tribunal and the same was not verified by the insurance company.

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

The Tribunal framed issue including issues No.3 and 4 on the basis of plea raised by the insurance company, reads thus:-

> 3. Whether respondent No.1 was not having valid and effective driving licence at the time of accident? OPR
> 4. Whether the offending vehicle was being driven in violation of the terms and conditions of the insurance policy at the time of accident? OPR

Indisputably, copy of driving licence of Girraj Sharma, driver of vehicle No.RJ-23-GA-3834 was placed on record and in this manner the insured discharged its primary obligation of producing copy of driving licence. Thereafter, it was for the insurer to seek necessary verification of the driving licence and prove that the said driving licence was not valid on the day of occurrence. The Tribunal has gone wrong by taking a technical view of the matter but without appreciating that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. In the given circumstances, findings of the Tribunal recorded in para 20 of the award, cannot be allowed to sustain and are set aside. As a consequence, issue No.3 is answered against the insurer and in favour of respondents No.1 and 2 before the Tribunal. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

15.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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