

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO 1904 of 2018 (O&M)

Date of decision: 17.07.2019

New India Assurance Company Limited

.....Appellant

Versus

Mandeep Kaur and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Paul S Saini, Advocate
for the appellant

None for the respondents

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Rekha Mittal, J. (Oral)

CM 7574 CII of 2018

Prayer in this application is for condoning delay of 51 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
51 days in filing the appeal stands condoned.

Main case

The present appeal directs challenge against award dated
26.10.2017 passed by the Motor Accidents Claims Tribunal, Jalandhar (in
short, 'the Tribunal') whereby compensation has been assessed on account of
death of Shamsheer Singh in a motor vehicular accident that took place on

16.11.2016.

Counsel for the insurance company would inform that appeal was filed to challenge quantum of compensation and findings of the Tribunal on the question of driving licence. Plea of the insurance company with regard to challenge qua quantum of compensation has already been disposed of vide this Court's order dated 20.04.2018, therefore, the only controversy that survives for consideration is qua licence of driver-cum-owner of motor cycle bearing registration No. PB08-DE-5223 (since deceased) now represented by his widow.

Counsel for the appellant would argue that the insurance company issued notice dated 13.09.2017 calling upon Neelam widow of Mangal Dass who lodged DDR dated 18.09.2017 with regard to driving licence of Mangal Dass having lost in the accident. It is vehemently argued that since widow of driver-cum-owner did not provide particulars of driving licence possessed by Mangal Dass, the insurance company has been deprived of opportunity to verify driving licence and establish its plea that Mangal Dass was not duly licenced and as such, the insurance company cannot be saddled with liability to pay compensation.

I have heard counsel for the appellant and perused the paper book particularly the award.

Neelam, widow of Mangal Dass appeared in witness box and tendered into evidence her duly sworn affidavit Ex.RW1/A and produced on record a copy of DDR dated 18.09.2017 Ex.RA. The witness was cross examined at length by counsel for the insurance company. She has refused that she had received any notice from the insurance company calling upon

her to produce documents. She was not confronted with copy of the notice to seek her explanation. Taking into consideration testimony of Neelam Devi wife of Mangal Dass coupled with that Mangal Dass sustained injuries in the occurrence that proved fatal, it is difficult to accept contention of the insurance company that legal representative of Mangal Dass had intentionally failed to supply particulars of driving licence or discharge primary obligation to prove that Mangal Dass was holding driving licence to drive the motor cycle in question. In this view of the matter, it is difficult to accept contention of the insurance company that the insured is guilty of breaching terms and conditions of insurance policy constituting a defence in favour of the insurer. As such, findings of the Tribunal qua driving licence cannot be faulted with.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal stands disposed of.

(Rekha Mittal)
Judge

17.07.2019
Mohan Bimbra

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