

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 215

FAO-5046-2017 (O&M)

Date of decision : 08.01.2019

Parvez Khan and another

..... Appellants

VERSUS

National Insurance Co. Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Munish Puri, Advocate, for the appellants.

Mr. Pradeep Kumar, Advocate, for respondent No. 1.

Mr. Sachin Ohri, Advocate, for respondents No. 2 and 3.

DEEPAK SIBAL, J. (ORAL)

The present appeal has been preferred by the owner and driver of the truck/oil tanker bearing No. JK-02-BP-6889 (for short, the offending vehicle) to challenge therein that part of the award passed by the Motor Accident Claims Tribunal, Pathankot (for short, the Tribunal) granting the right to respondent No. 1-Insurance Company to recover the awarded compensation from the appellants after disbursing the same to respondents No. 2 and 3/claimants.

Learned counsel for the parties have been heard.

One of the issues framed and decided by the Tribunal was as to whether respondent No. 1 was not having a legal and valid driving license at the time of accident and further as to whether respondent No. 2 violated any of the other terms of policy. Though the onus to prove such issue was on respondent No. 1-Insurance Company, no evidence in that regard was led by them. On the other hand, appellant No. 1-driver of the offending vehicle produced his driving licence as Ex. R2.

The Tribunal after observing that appellant No. 1-driver's licence permitted him to only drive a motorcycle with gears and non-transport vehicles granted respondent No. 1-Insurance Company the right to recover the compensation from the appellants after disbursing the same to respondents No. 2 and 3/claimants.

After perusing (Ex. R2) i.e. appellant No. 1-driver's driving licence it is found that he was authorised to drive not only a motorcycle with gear; a light motor vehicle (non-transport) but also a transport vehicle. Thus, the findings of the Tribunal in this regard are found to be against the record. Further, a certificate has also been produced by appellant No. 1/driver before this Court as an additional evidence through which it is certified by the Licensing Authority, Regional Transport Office, Jammu that at the time of the accident he was also authorised to drive a dangerous and hazardous vehicle.

In view of the above but without recording any finding on the genuineness and evidentiary worth of the driving licence (Ex. R2) as also the additional evidence produced before this Court, the impugned award is set aside only to the extent so far as it grants the right to respondent No. 1-Insurance Company to recover the awarded compensation from the appellants after disbursing the same to respondents No. 2 and 3/claimants and the matter is remitted to the Tribunal to decide this issue afresh after giving opportunity to all parties. The Tribunal shall permit the appellants to prove the driving licence (Ex. R2) as also the additional evidence produced by them before this Court in accordance with law. Needless to say that respondent No. 1- Insurance Company shall also be granted adequate

opportunity to rebut such evidence.

A final decision be taken by the Tribunal within six months from the date of receipt of a certified copy of this order.

The appeal is allowed in the above terms.

08.01.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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