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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5088 of 2017(O&M)
Decided on: 30.09.2019

Shaitan Jat and another .....Appellants

versus

Manju Devi and others ....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.M.S.Saini, Advocate,
for the appellants.

Mr.Sanjeev Arora, Advocate
for respondent No.8-Insurance Company.

DR.RAVI RANJAN, J. (Oral Judgment)

CM-15685-CII-2019

This application has been filed for condoning the delay of 31 days which has occurred in preferring the appeal.

Heard learned counsel for the parties.

Having regard to the averments made in this application, the same is allowed and the delay of 31 days in filing the appeal is hereby condoned.

FAO No. 5088 of 2017

This is an appeal filed by the owner and driver of the offending vehicle assailing the Judgment and Award dated 22.12.2011 by which the claim petition filed by the claimants/respondents under Section 166 of the Motor Vehicles Act, 1988 has been allowed and the claimants have been

found to be entitled to receive compensation of a sum of Rs.5,86,000/- alongwith interest at the rate of 9% per annum to be calculated from the date of filing of the claim petition till the realisation of the awarded amount.

In the present appeal, challenge has only been made to that part of the Judgment and Award by which the Insurance Company, i.e., respondent No.8 herein, has been directed to pay the compensation amount to the claimants and recover it from the owner and driver. It is contended that, the offending vehicle being insured, the Insurance Company had a liability to indemnify the owner.

From the perusal of the impugned Judgment it appears that the Insurance Company has been exonerated on the ground that the driver and owner did not appear to defend themselves despite service of notice and there is nothing on record to show that the driver of the offending vehicle was having valid driving licence at the relevant point of time as well as the offending vehicle was having a valid route permit. It appears that thereafter, an application was filed by the owner and driver (appellants herein) for setting aside the *ex parte* decision against them. However, the said application was also dismissed on the ground that the driver and owner did not appear despite summons were validly served upon them. Having failed there, they have now filed the appeal on merit. It appears from the order dated 22.11.2018 that a co-ordinate Bench, after a copy of a driving licence was brought on record as Annexure A-5, had directed Insurance Company to verify the same.

Learned counsel for the Insurance Company has submitted on instruction that the driving licence has been verified and the same has been found to be correct. So far the route permit is concerned, it appears that a copy of permit was filed in the case filed by the appellants for setting aside the *ex parte* Judgment and Award, as Ex.A5. A true copy of the same has been produced at the time of hearing before this Court from which it appears that on the date of accident, i.e. 25.02.2010, the vehicle was having a valid national permit.

Having regard to the aforesaid facts and circumstances it appears that admittedly, the driver was having a valid licence and vehicle was having a valid route permit, thus, the liability would definitely be on the Insurance Company to indemnify the owner.

Accordingly, this appeal stands allowed to the aforesaid extent only with a direction that the respondent No.-8-Insurance Company would have to pay the amount awarded alongwith interest to the claimants, which, according to the learned counsel for the Insurance Company, has already been paid but that part of the impugned Judgment by which the recovery right has been given to the respondent No.8-Insurance Company is quashed and set aside. In the result of which there would no be recovery by the Insurance Company.

(DR. RAVI RANJAN)
JUDGE

September 30, 2019
dharamvir

Whether speaking/reasoned: Yes
Whether Reportable: No