IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.5429 of 2017 (O&M)
Date of decision: 21.05.2019

National Insurance Co. Ltd. ... Appellant

Versus

Shankar Lal and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gopal Mittal, Advocate for the appellant.
None for respondent No.3.

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REKHA MITTAL, J. (Oral)

CM No.17286-CII of 2017

Heard.

Allowed as prayed for. Delay of 36 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 12.04.2017 passed by the Motor Accidents Claims Tribunal, Patiala whereby compensation has been assessed in respect of injuries sustained by Shankar Lal in a motor vehicular accident that took place on 27.02.2016.

Counsel for the insurance company would inform that appeal has been preferred to assail findings of the Tribunal only on issue No.4, reads thus:-

> Whether the driver of the truck bearing registration No.HR-55J-7800 i.e. respondent No.1 was not holding a valid and effective driving licence, fitness certificate, route permit and registration certificate at the time of accident? OPR No.3.

Counsel for the appellant would argue that the insurance company filed an application dated 21.12.2016 seeking production of insurance policy, registration certificate, fitness certificate and route permit of the vehicle involved in the accident. The same was decided by the Tribunal vide order of even date appended with the appeal and operative part of the order reads thus:-

> In view of this, the claimant is directed to produce the above referred documents on or before the next date of hearing,

> failing which an adverse inference with regard to non-production of the above referred documents shall be taken against the claimant as well as respondents No.1 and 2 at the time of final arguments of this case.

It is further argued that though copy of driving licence and registration certificate were produced on record and marked as exhibits but copy of fitness certificate and route permit were not produced and as such, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimant.

Indisputably, the driver and owner of the offending vehicle were ex parte before the Tribunal. Nothing has been mentioned in the order dated 21.12.2016 if any notice of the application was sent to driver or owner of the vehicle for producing the documents. There is nothing on record suggestive of the fact that the insurance company ever served notice upon the registered owner calling upon him to produce documents. Though the Tribunal has held that non production of the documents shall be taken against the claimant as well as respondents No. 1 and 2 at the time of final argument but non production of fitness certificate and route permit is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988, thus, the insurance company cannot be heard to say that the insured is guilty of breaching the terms and conditions of policy that entitles the insurance company to press for right of recovery against the insured after payment of compensation to the claimant. In this view of the matter, contention raised by the insurance company is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

21.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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