IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1396 of 2016(O&M)

Date of decision: 30.4.2019

M/s Nishat and Malwa Bus Pvt. Ltd. …..Appellant

VERSUS

New India Assurance Company Ltd. and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Thakur, Advocate for the appellant.

Mr. Amit Kundra, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.4963-CII of 2016

Prayer in this application is for condoning delay of 1744 day in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Navneet Singh Grover, M.D., M/s Nishat & Malwa Bus Pvt. Ltd. coupled with that claim of the victim has already been satisfied as compensation has been paid by the insurance company and no third party interests have been created in the intervening period, the application is allowed. Delay of 1744 day in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.1396 of 2016

The present appeal directs challenge against award dated 16.02.2011 passed by the Motor Accidents Claims Tribunal, Gurdaspur (in short 'the Tribunal') whereby compensation has been assessed with regard to death of Parduman Shah in a motor vehicular accident that took place on 17.10.2009.

Counsel for the appellant, owner of offending vehicle i.e. bus bearing No.PB-02-AL-9913, would inform that the appeal has been preferred to the limited extent of assailing findings of the Tribunal on issue No.3 on the basis whereof the insurance company has been allowed right of recovery against the driver and owner of the offending vehicle. It is argued with vehemence that the Tribunal never closed evidence of respondents No.1 and 2 therein but decided the case on 16.02.2011. It is further argued that it was specifically stated before the Tribunal that licence possessed by the driver is available on the records of criminal case but the insurance company neither got the particulars of driving licence from the said records nor sought necessary verification from the authority concerned, therefore, findings of the Tribunal on issue No.3 cannot be allowed to sustain and liable to be set aside. In addition, it is argued that the appellant has filed an application under Order 41 Rule 27 read with Section 151 CPC seeking permission to place on record copy of driving licence and verification report in regard thereto and in the given circumstances, the matter may be remitted to the Tribunal for deciding issue No.3 afresh after providing an opportunity to the appellant to place on record copy of driving licence and thereafter its verification by the insurance company, in accordance with law.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.3 with the submission that as the appellant failed to provide particulars of driving licence much less to produce a copy thereof before the Tribunal, there was no opportunity with the insurance company to seek necessary verification and to prove that licence was not valid or effective.

Be that as it may, perusal of the zimini orders recorded by the Tribunal makes it evident that there was no order made by the Tribunal closing evidence of respondent No.1 and 2 therein and the case was decided after evidence was closed by the insurance company. In the given circumstances, it can safely be held that the Tribunal decided the case without any order with regard to closing of evidence by the appellant itself or by order of the Court. This apart, the appellant has filed an application for additional evidence to produce copy of driving licence possessed by Baldev Singh and verification report in regard thereto. In the given scenario, in my considered opinion, interest of justice commands that findings of the Tribunal on issue No.3 should be set aside and the matter be remitted to the Tribunal for deciding that issue afresh on the basis of materials on record and additional evidence to be adduced by the parties with regard to licence of Baldev Raj, driver of offending vehicle at the relevant time.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Determination of issue No.3 by the Tribunal is set aside and the matter is remitted to the Tribunal for deciding issue No.3 afresh on the basis of materials available on record and additional evidence to be adduced by the appellant as well as insurance company. Parties through their counsel are directed to appear before the Tribunal on 27.05.2019. It is clarified that since compensation has already been paid to the claimants, the Tribunal would not seek their presence for determining issue No.3, a dispute between the insured and insurer.

APRIL 30, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no