IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 1913 of 2018 (O&M)
Date of decision: 19.09.2019

Som Dutt through his LRs ....*Appellant*

Versus

The New India Assurance Company Limited and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. J S Yadav, Advocate
for the appellant

Mr. Paul S Saini, Advocate
for the insurance company

-.-

Rekha Mittal, J. (Oral)

CM 7624 CII of 2018

Prayer in this application is for condoning delay of 269 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 269 days in filing the appeal stands condoned.

CM 7625 CII of 2018

Prayer in this application is for impleading legal representatives of appellant - Som Dutt (since deceased).

In view of averments made in the application supported by an

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affidavit, the application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as legal representatives of appellant Som Dutt (since deceased) for the purpose of present *lis*, subject to just exceptions.

Main case

Challenge in the present appeal is directed against award dated 24.04.2017 passed by the Motor Accidents Claims Tribunal-I, Rewari, (in short, 'the Tribunal') on account of death of Gaffar in a motor vehicular accident that took place on 31.03.2012.

The instant appeal has been filed by Som Dutt through his legal representatives, owner of offending vehicle bearing No. HR-47-9250 to the limited extent that the insurance company has been given right of recovery against the insured and driver of offending vehicle, in view of findings of the Tribunal in paras 30-31 of the award with the observations that the vehicle was being plied without a valid permit which amounts to breach of terms and conditions of the insurance policy.

Counsel for the appellant would argue that the appellant has filed an application under Section 151 of the Code of Civil Procedure seeking permission to place on record a copy of permit that was valid on the date of accident. It is further submitted that since the Tribunal did not frame an issue with regard to non-possessing of permit nor an application was filed by the insurance company calling upon the insured to produce a copy of permit before the Tribunal, the document could not be produced before the Tribunal. It is further argued that since the vehicle had a valid permit on the date of accident, the insurance company is liable to indemnify the

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insured in discharge of its obligation under the insurance policy.

Counsel representing the insurance company would fairly inform that though the appellant has not filed an appropriate application to adduce additional evidence but permit produced on record has been found to be valid. It is further submitted that the appellant is liable to be burdened with costs for failure to produce a copy of permit before the Tribunal and filing of appeal after delay of 269 days.

I have heard counsel for the parties and perused the paper book.

Perusal of the award makes it evident that the Tribunal did not frame any issue, if the vehicle was being plied without a permit. There is nothing on record suggestive of the fact that the insurance company ever pressed for framing of such an issue during course of the hearing. Counsel for the insurance company has not refuted contention of the appellant that no application was filed by the insurance company calling upon the insured to produce a copy of permit for necessary verification. Taking into consideration the aforesaid facts coupled with that a copy of permit produced on record, on due verification, was found to be genuine, therefore, right of recovery given in favour of the insurance company for want of permit cannot be allowed to sustain and is accordingly set aside. This apart, the Tribunal has allowed right of recovery against driver of vehicle without appreciating that it is none of the obligation of driver to obtain a permit nor can he be held guilty of breaching terms and conditions of contract for want of privity of contract between the insurer and driver.

In view of what has been discussed hereinbefore, the appeal is partly allowed, findings of the Tribunal on the question of permit are set

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aside. As a natural consequence, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

(Rekha Mittal)
Judge

19.09.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

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