IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8472 of 2018(O&M)
Decided on:22.01.2019.

The United India Insurance Co. .....Appellant

versus

Kushal and others ....Respondents

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

Present: Mr.Amit Kundra, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral)

This appeal is directed against the judgment and Award dated 02.08.2018 passed by the Motor Accident Claims Tribunal, Narnaul in MACT case No.169 of 2015, by the appellant-Insurance Company.

1. Learned counsel appearing for the Insurance Company has categorically stated before this Court at the time of hearing that the challenge has been made to the Award 02.08.2018 only on the ground that since the offending vehicle was a heavy motor vehicle, i.e. a truck bearing Registration no.GJ-9Y-9887, and it was not having the necessary route permit, etc. for plying a vehicle on the concerned route, the Insurance Company in such a condition should have given liberty by the Tribunal to recover the compensation amount from the owner and the driver of the vehicle. On perusal of the judgment and Award it appears that, since none had appeared on behalf of respondents no.1 and 2, i.e. the owner and driver of the offending vehicle, the case has been proceeded

ex parte against them vide an order dated 02.08.2017. However, a certified copy of the driving licence of respondent no.1 is on record as Ex.P-9 and there is also no dispute that the vehicle was not insured with the appellant-Insurance Company.

2. So far as the ground being raised before this Court that is the fact that the truck was not having a valid route permit etc. is concerned, a simple query was made to the learned counsel, as to whether such issue was ever raised by the Insurance Company at the time of hearing of the case, but no clear answer could be given by him.

3. On perusal of the judgment and Award it appears that issue no.3 has been framed to the extent as to whether the respondent no.1 did not hold a valid and effective driving licence and the insured has violated the terms and conditions of the insurance policy as alleged? The issue has however, in view of the certified copy of the driving licence having been issued on behalf of the respondent no.1 (before the Tribunal) which is on record as Ex.P-9 has been answered and decided against the Insurance Company and it does not appear from the judgment at all that the issue that the concerned truck was not having a valid route permit was ever raised at the time of hearing of the case before the Tribunal. This Court requested learned counsel to pass on a copy of the written statement which was filed on behalf of respondent no.3 before the Tribunal, i.e. the appellant-Insurance Company(herein). Learned counsel has furnished a copy of the same at the time of hearing before this Court, which is taken on record.

On perusal of the written statement it does not appear that such ground was taken anywhere in the pleading of the Insurance Company that the concerned vehicle was not having a route permit.

4. In such a situation, it would not be possible for this Court to allow him to raise such a question of fact at the appellate stage, when the same was not present in the pleading of the appellant.

5. Since this point was not raised and the truck was plying on the route and the driver was having a valid driving licence, it would be difficult to presume that the owner was not having a valid permit to ply the vehicle on the concerned route, especially for the reason that this issue was never raised by the appellant-Insurance Company before the Tribunal.

6. In the result, this Court does not find any merit in the present appeal and, accordingly, the same is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

January 22, 2019
dharamvir

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No