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In the High Court of Punjab and Haryana at Chandigarh

FAO- 1528 of 1995 (O&M)
Date of Decision: 8.1.2020

National Insurance Company Limited

---Appellant

versus

Mrs. Santosh Kumari and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gopal Mittal, Advocate
for the appellant

Mr. Bikramjit Singh Bajwa, Advocate,
for respondent No. 5

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Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 24.1.1995 to the limited extent qua findings of the Motor Accidents Claims Tribunal, Gurdaspur (in short the Tribunal") on the question of driving licence.

Counsel for the appellant would argue that the insurance company appointed investigator for verification of driving licence of Karnail Chand, driver of truck No. PBN- 3447 and report received by him is marked on record. It is further argued that the insurance company filed an application for appointment of local commission for recording statement of licensing authority and Assistant Regional Transport Officer, Sundergarh (Orissa) from whom Karnail Chand purportedly got the licence issued but the said application was dismissed by the Tribunal on 19.1.1995, few days before passing of award on 24.1.1995. It is further argued that the

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Tribunal did not afford adequate opportunity to the insurance company to establish its plea that licence possessed by Karnail Chand is not valid and the insured is guilty of violating the terms and conditions of policy constituting a defence in favour of the insurer.

Counsel representing respondent No. 5, on the contrary, has supported the award with the submission that despite providing opportunities, the insurance company did not adduce sufficient much less cogent evidence to substantiate its plea with regard to invalidity of licence possessed by Sh. Karnail Chand. It is further submitted that application for appointment of local commission was filed few days before passing of the award when proceedings were at the stage of culmination, therefore, the Tribunal has rightly rejected the application.

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

The records have been burnt in a fire incident, therefore, zimni orders recorded by the Tribunal are not available for perusal and appreciation. At the same time, it is evident that insurance company appointed an investigator for verification of driving licence but did not examine the said investigator to prove a report received by him from the concerned licensing authority. There is nothing on record suggestive of the fact that the insurance company filed an application for summoning a witness from the concerned licensing authority along with relevant records to establish its plea that licence possessed by Karnail Chand was not issued by the licensing authority concerned. On the contrary, application for appointment of local commission was filed few days before passing of the

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award and the same was rightly rejected by the Tribunal with the observations that last opportunity was provided for adducing evidence in a claim application filed more than five years ago when the insurance company filed application for appointment of local commission. In this view of the matter, I find myself unable to be persuaded with the submission made by counsel for the appellant that insurance company was not given adequate opportunities to adduce evidence or the matter with regard to driving licence needs to be re-opened after more than two decades. As the insurance company failed to prove that licence possessed by Karnail Chand was not valid or he was not duly licensed to drive the offending vehicle, the Tribunal has rightly held the insurance company liable to pay compensation in discharge of its contractual obligation.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

8.1.2020
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No