**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.2734 of 2020 (O&M)
Date of decision: 27.07.2020**

United India Insurance Company Limited
….Appellants
Versus

Ami Lal and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishwajit Bedi, Advocate,
for the appellant.
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RITU BAHRI J. (Oral)

CM No.7516-CII of 2020

For the reasons mentioned in the application, same is allowed and delay of 44 days in filing of the appeal is condoned.

FAO No.2734 of 2020 (O&M)

United India Insurance Company Limited-appellant has filed this appeal against the awarded dated 09.03.2020 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.2,50,000/- has been awarded in favour of claimant-respondent No.1 (Ami Lal) on account of death of Shanti in a motor vehicular accident which took place on 19.04.2018.

The Insurance Company is challenging the award on the ground that the driving licence (Ex.R-2) of driver-respondent No.5 (respondent No.1 in claim petition) was found to be forged and fabricated as per report Ex.R7 given to the Insurance Company by the Transport Department.

On this aspect, issue No.3 is relevant. Learned counsel for the Insurance Company-appellant has referred to the deposition of Ramesh

Chander (RW-3), who is owner of the offending vehicle. He deposed that Angrej Singh-driver was a trained truck driver and had been driving the truck for the last 15-20 years. He engaged him as truck driver on 01.11.2017 and along with his driving licence, he had given 'NOC' stating that the same was genuine. RW-3 further stated that he had seen the driving licence of the driver and had also tested his driving skill. On being satisfied in this regard, he employed Angrej Singh as driver.

The Tribunal had observed that the insurance company failed to lead any evidence to show that Ramesh Chander, owner of offending vehicle (RW-3) knowingly and intentionally handed over the vehicle to Angrej Singh-respondent No.1 (respondent No.5 herein), who was not holding a valid licence to drive such vehicle.

This aspect has been examined by Hon'ble the Supreme Court in ***National Insurance Company Ltd. vs. Swaran Singh and others,*** 3 SCC 341, wherein it has been held that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time. In this background, Hon'ble the Supreme Court held that there was no breach of Section 149 (2) (a) (ii) of the Act and the Insurance Company would be liable under the policy, to pay the compensation.

Thereafter, in ***Pepsu Road Transport Corporation vs. National***

Insurance Company, 2013 (5) Law Herald (SC) 4355 and ***Ram Chandra Singh vs. Rajaram and others,*** 2018 (5) RCR (Civil) 381 (SC), Hon'ble the Supreme Court has followed the law laid down in ***Swaran Singh's*** case (supra). Recently, in ***Nirmala Kothari vs. United India Insurance Company Ltd.,*** Civil Appeal Nos.1999-2000 of 2020 (decided on 04.03.2020), Hon'ble the Supreme Court held that if, the owner of vehicle has taken due diligence while appointing a driver seeing his driving licence, the Insurance Company cannot be absolved of its liability to pay compensation, as it will not amount to violation of any terms and conditions off the insurance policy.

Learned counsel for the appellant has not been able to refer any judgment contrary to the judgments referred by the Tribunal while returning finding on issue No.3. Therefore, this argument raised by learned counsel for the appellant is rejected.

The second argument of learned counsel for the appellant is that there was no sufficient evidence to prove that the accident had taken place with the offending vehicle.

Even this aspect has been examined by the Tribunal while deciding issue No.1 and it has been rightly answered in favour of the claimants keeping in view that immediately after the accident on 19.04.2018, FIR No.208 dated 19.04.2018, under Sections 279/337 IPC was registered at Police Station Pehowa against the driver-respondent No.1 (in claim petition) for causing the accident. Ex.P1 is the copy of report under Section 173 Cr.P.C., Ex.P2 is the copy of charge sheet dated 02.01.2019 framed by the Court of Sub Divisional Judicial Magistrate, Pehowa. As per postmortem report Ex.P4, deceased Shanti died due to the injuries suffered in a road side accident. All the above evidence was sufficient to return a finding that the driver of offending vehicle was negligent in causing the accident.

In this case, compensation has been correctly assessed by the Tribunal by taking the notional income of deceased as Rs.3000/-. In view of the above discussion, this Court is of the considered view that finding on all the issue has been rightly given by the Tribunal and no ground is made out to interfere therein. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

27.07.2020
ajp

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