IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.02.2020

FAO 2294 of 2007

National Insurance company Limited *...Appellant*

Versus

Raj Rani and others *.....Respondents*

FAO 2295 of 2007

National Insurance Company Limited *........Appellant*

Versus

Asha Kumari and others *.......Respondents*

FAO 2296 of 2007

National Insurance Company Limited *........Appellant*

Versus

Parkasho Devi and others *.......Respondents*

FAO 2297 of 2007

National Insurance Company Limited *........Appellant*

Versus

Poonam Sharma and others *.......Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Paul S Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the insurance company

Mr. Aayush Goyal, Advocate for
Mr. Vishal Aggarwal, Advocate
for respondents No. 1 and 2 (FAO 2297 of 2007)

Mr. Sanyam Malhotra, Advocate

for respondent No. 3 (FAO 2296 of 2007)
for respondent No. 6 (FAO No. 2295 of 2007)

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as identical questions of law and facts are involved for adjudication. However, for facility of reference, facts are taken from FAO No. 2294 of 2007.

The sole submission made by counsel for the appellant is that as Kuldeep Kumar, driver of Car PB 06D 0430 involved in the accident did not have a valid licence, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants. It is further argued that though the Tribunal has accepted, in view of testimony of Harjinder Kumar, Clerk, DTO Office, Gurdaspur (RW1) that licence bearing No. 1375/N/Gsp/2002 was not issued in the name of Kuldeep Kumar and the same was issued in the name of Dharminder Kumar but still the Tribunal has not allowed recovery right by making incorrect observations that the insurance company has not adduced evidence that any of the conditions of insurance policy has been violated and the insurance company has not proved insurance policy cover note showing any such condition. It is further argued that in para 20 of award, the Tribunal has noticed that copy of insurance policy cover note is marked as Ex. A5. It is further argued that as per document Ex.A5, this is one of the conditions of contract *i.e. 'any person including insured provided that a person holds an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence'*.

Taking into consideration the observations of Tribunal in respect of licence of Kuldeep Kumar being fake and condition contained in cover note when examined in the light of land mark judgments of Hon'ble the Supreme Court ***National Insurance Company Limited vs Swaran Singh and others, 2004 ACJ 1*** and ***Pappu and others vs Vinod Kumar Lamba and another, 2018 (1) PLR 425,*** there is no escape from conclusion that the insured is guilty of violating the terms and conditions of policy in respect of valid licence of the driver, therefore, the insurance company is entitle to have right of recovery against the owner/insured after payment of compensation to the claimants. Accordingly, findings of the Tribunal on the question of liability are modified in the aforesaid terms.

For the foregoing reasons, the appeals are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

20.02.2020
Mohan Bimbra

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