IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 5344 of 2010 (O&M)
Date of decision: 15.01.2020

Rajesh ....*Appellant*

Versus

United India Insurance Co. Pvt. Limited and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Anita Sharma, Advocate
for the appellant

Mr. Varun Miital, Advocate for
Mr. V M Gupta, Advocate
for respondent – Insurance company

None for respondent No. 2 and 3

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against award dated 16.04.2010 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short, 'the Tribunal') to the limited extent that the Tribunal has allowed recovery right against the insured of offending vehicle i.e. Tavera Car bearing No. CH 02 2158 on the question of licence of driver of aforesaid vehicle.

Counsel for the appellant would argue that the Tribunal has framed issue No. 3, reads thus:-

> *"Whether respondent no. 1 was not holding a valid or effective driving licence on the day of accident? OPR"*

It is argued that as the insurance company failed to discharge onus of issue No. 3 and merely placed on record photocopy of report mark B, the Tribunal has grossly erred by determining issue No. 3 in favour of the insurance company on the basis whereof, recovery right has been given against respondents No. 1 and 2 therein.

Counsel representing the insurance company, on the contrary, would argue that strict principles of law of evidence are not applicable to proceedings before the Tribunal which are summary in nature, therefore, the Tribunal has rightly relied upon document mark-B for deciding issue of driving licence. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***Mantoo Sarkar vs Oriental Insurance Company Limited and others, 2009 (1) R.C.R. (Civil) 417*** and a division Bench judgment of Karnataka High Court ***Basappa and another vs K H Sreenivasa Reddy and others, 1982 AIR (Karnataka) 30.***

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

Driving licence possessed by driver of offending vehicle was placed on record. The insurance company raised a plea that the driver was not duly licensed to drive the offending vehicle and as such, it was for the insurance company to prove that licence possessed by the driver is not valid. The insurance company has merely placed on record a photo copy of report mark B. It neither examined any official of the said authority along with relevant records nor sought examination of the witness through a commission. Photocopy mark B has wrongly been relied upon by the Tribunal to arrive at a finding that licence possessed by the driver was not valid or insured is guilty of violating the terms and conditions of policy. As such, findings of the Tribunal on issue No. 3 cannot be allowed to sustain and are set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any recovery right.

No other point has been raised.

In view of what has been discussed herein above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

15.01.2020
Mohan Bimbra

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