IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 FAO No.3070 of 2016 (O&M)

Date of decision: 12.02.2020

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

BHAWANA & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Pardeep Goyal, Advocate for the appellant.
Ms. Akansha Yadav, Advocate for
Mr. NC Kinra, Advocate for respondent No.4.
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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 18.09.2015 to the limited extent of findings of the Tribunal on issue No.3 pertaining to licence of driver, reads thus:-

> Whether respondent No.1 had no valid effective driving licence on the day of accident?OPR

Counsel for the appellant would argue that application under Order 41 Rule 27 read with Section 151 CPC has been filed for placing on record verification report Annexure A1 and report of the surveyor Annexure A2, sufficient to establish that Akhilesh Singh Vaishy did not have valid licence to drive the offending vehicle i.e. bus bearing No.HR-38Q-6125.

Counsel representing respondent No.4, on the contrary, would argue that appeal has been filed after inordinate delay of 127 days and there are no sufficient grounds to condone the delay. Another submission made by counsel is that documents Annexure A1 and A2 cannot be read into evidence for deciding the question of driving licence as the insurance company failed to examine a witness of the concerned licensing authority along with relevant record to establish its plea that driver was not duly licensed to drive the offending vehicle.

I have heard counsel for the parties, perused the paper book particularly the application for condonation of delay and award passed by the Tribunal.

Apart from the fact that appeal is filed after delay of 127 days, the same sans merit and liable to be dismissed.

The insurance company raised a plea that driver did not possess a valid licence to drive the offending vehicle, thus, insured is guilty of violating the terms and conditions of insurance policy. The Tribunal framed issue No.3 extracted hereinbefore. The insurance company did not adduce any evidence to establish its plea with regard to driving licence. The document Annexure A1 is a copy of some information sought by Mr. Harendra Kumar Ojha and Annexure A2 is copy of verification report of driving licence received by said Harendra Kumar Ojha. These reports are not per se admissible in evidence and as such, cannot be taken into consideration for accepting plea of the insurance company that driver was not duly licensed or license possessed by him is fake being not issued by the concerned Licensing Authority at Bhind (MP). In this view of the matter, I find myself unable to accept contention of the insurance company that findings of the Tribunal on issue No.3 are erroneous or insurance company is entitle for right of recovery against the insured after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

12.02.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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