IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 FAO-4913-2016 (O&M)

Date of decision: 15.01.2020

SACHIN VERMA ... Appellant

Versus

NEW INDIA ASSURANCE CO LTD & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rakesh Gupta, Advocate for the appellant.
Mr. Vinod Gupta, Advocate for insurance company.
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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 28.07.2016 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri to the limited extent that insurance company has been given right of recovery against the appellant (owner of tanker Tata 1612 bearing No.PB-12-G-4559).

The Tribunal framed issue No.3, reads thus:-

> Whether the insured has violated the terms and conditions of the insurance policy as alleged. If so, its effect?OPR-3

The Tribunal answered this issue in favour of the insurer and consequently allowed recovery right against the driver and owner of offending vehicle. A relevant extract from para 21 of the award reads as follows:-

> 21. The burden was on the insurance company to prove that the driving licence held by respondent No.1 was not genuine. It is evident that no attempt was sought to be made by the insurance company to either summon the concerned Licensing Authority or to have a local commission appointed. However, this would not mean that it has not been able to discharge the burden. The driving licence Ex.R1 appears to have been issued by District Transport Officer, Tuensang, Nagaland. It cannot be denied for getting driving licence, it is necessary that the applicant is at least a temporary resident of the place where he applies for one. Respondent No.1 has not stepped in the witness box to say as to when and in what capacity did he visit Nagaland to get issued the driving licence. This being the position, there could be no question of a genuine driving licence having been issued in his name. In a similar circumstance, the Hon'ble High Court, Punjab and Haryana in Manjit Kaur and others Vs. H.S.Atwal and others, 2013 ACJ 2839, negatived the contention that it was possible for a

> resident of Haryana to secure driving licence from Nagaland without going to the office of the Licensing Authority. The facts in the case in hand are not different. In other words, the law laid down in Manjit Kaur and others Vs.H.S.Atwal and others' case (supra) is applicable to the facts in hand on all the fours. Therefore, notwithstanding the failure of the respondent-insurance company to bring on record the report from Licensing Authority, it is held that the driving licence Ex.R1 is not genuine. Therefore, the liability to pay the compensation will be that of respondents No.1 and 2, the driver and registered owner, jointly as well as severally.

Indisputably, driving licence in the name of Kamaldev, driver of offending vehicle is marked as Ex.R1. The insurance company has raised a plea that driver was not duly licensed to drive the offending vehicle. The insurance company did not examine a witness of concerned licensing authority namely District Transport Office, Tuensang, Nagaland to prove that licence Ex.R1 had not been issued by the said authority. Not only this, the insurance company did not examine driver of the offending vehicle to know as to the circumstances under which he obtained licence from an authority at Nagaland. On the contrary, the insurance company verified the licence and placed on record a communication dated 16.10.2014 received by the Senior Branch Manager of the insurance company. As per the verification report, licence was issued from the office of DTO, Tuensang to Mr. Kamaldev on 12.07.2010 and endorsement for LTV and HTV was made on 12.12.2013 valid upto 11.12.2016. It is also reported that licence is genuine. The Tribunal, for the reasons best known, did not advert to this report Ex.R2 while wrongly upholding plea of the insurance company that licence Ex.R1 is not genuine. As such, findings of the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside. As a consequence, insurance company shall be jointly and severally liable to pay compensation.

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

15.01.2020 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No