# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO 5447 of 2019 (O&M)**
Date of decision: 31.01.2020

*Aabid Hussain and another* ........*Appellants*

***Versus***

*Munni and others* .......*Respondents*

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Balraj Gujjar, Advocate
for the appellants

Mr. D K Prajapati, Advocate for
Mr. Raghujeet Singh Madan, Advocate
for respondent No. 4

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**Rekha Mittal, J.** (Oral)

## CM 18126 CII of 2019

Prayer in this application is for condoning delay of 205 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 205 days in filing the appeal stands condoned.

**Main case**

Challenge in the present appeal has been directed against award dated 12.11.2018 passed by the Motor Accidents Claims Tribunal, Mewat (in short, 'the Tribunal') to the limited extent that the insurance company has been given right of recovery against owner and driver of offending vehicle on the basis of issue of driving licence.

Counsel for the appellants would argue that Aabid Hussain-driver of offending vehicle had a licence authorizing him to drive the vehicle in question. It is further argued that the insurance company did not adduce evidence to prove that licence possessed by driver was not valid or the same was not issued by the Licensing Authority Jodhpur.

Counsel representing the insurance company, by relying upon the provisions of Section 9 of the Motor Vehicles Act, 1988 (in short, 'the Act') would contend that since the driver could not produce any evidence with regard to his residence or business within the jurisdiction of Licensing authority at Jodhpur, he was not entitle to file an application for issuance of licence before the said authority nor licence in his favour could be issued by the concerned authority.

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

As per the settled position in law, the insured has an obligation to ensure that he has given the vehicle for driving to a person who is duly licensed. The driver had a licence issued by the Licensing Authority, Jodhpur. The Insurance company did not examine a witness to prove that licence possessed by the driver was not issued by the Licensing Authority concerned. There is no obligation in law upon the insured to examine as to why the driver who is resident of Haryana at the time of employment has obtained driving licence from an authority outside State of Haryana. On the contrary, it is for the authority concerned to examine or seek production of document with regard to residence or place of business of the applicant before issuing licence keeping in view the provisions of Section 9 of the Act. In this view of the matter, I find it difficult to sustain findings of the Tribunal that either the insured is guilty of violating terms and conditions of policy or insurance company is entitle to have right of recovery against the insured much less against driver of offending vehicle. Accordingly, findings of the Tribunal on this aspect cannot be allowed to sustain and set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without right of recovery.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. Statutory amount of Rs.25,000/- be remitted to the Tribunal.

**(Rekha Mittal)**
**Judge**

31.01.2020
Mohan Bimbra

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