IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4908 of 2016(O&M)

Date of decision: 3.2.2020

IFFCO TOKIO General Insurance Co. Ltd …..Appellant

VERSUS

Swaranjit Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mrs Vandana Malhotra, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 30.03.2016 passed by the Motor Accidents Claims Tribunal, Sangrur (in short 'the Tribunal') whereby compensation has been assessed on account of death of Lakhwinder Singh in a motor vehicular accident that took place on 19.06.2015.

Notice of motion was issued only to respondent No.3 namely driver and owner of offending vehicle i.e. truck bearing No.MP07-G-6113. Respondent No.3 has been served through publication but failed to cause appearance.

Counsel for the appellant would argue that as per driving licence Ex.R1, Jaspal Singh was authorized to drive a transport vehicle till 16.04.2014 but the accident took place on 19.06.2015. It is further argued that on licence Ex.R1, there is no endorsement with regard to the driver being authorized to drive a transport vehicle subsequent to 16.04.2014 and as such he was not duly licensed to drive the offending vehicle on the day of accident.

Counsel for the appellant, during the course of hearing, supplied attested copy of driving licence in the name of respondent No.3, taken on record. Perusal of the document reveals that respondent No.3 was initially allowed to drive transport vehicle on 17.04.2008 and it is mentioned therein that licence was valid for transport till 16.04.2014 and for non-transport till 14.05.2018. The accident took place on 19.06.2015. As there is no endorsement on licence authorizing the driver to drive a transport vehicle subsequent to 16.04.2014, respondent No.3 was not duly licensed to drive the offending vehicle, on the date of accident.

The Tribunal without adverting to contents of Ex.R1, has held in para 16 that driver was holding all the required documents and respondent No.2- insurance company is liable to compensate the claimant without any right of recovery. In view of the above, findings of the Tribunal in respect of driving licence cannot be allowed to sustain and accordingly set aside. As the driver did not have licence to drive a transport vehicle on the date of occurrence, he being owner is guilty of violating the terms and conditions of policy that constitutes a defence in favour of the insurance company. As a natural consequence, insurance company shall be entitle to have right of recovery against respondent No.3, after payment of compensation to the claimant(s).

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FEBRUARY 3, 2020 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no