

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

277-284

Date of decision: 29.01.2020

Anand and anr.

FAO No.6609 of 2019 (O&M)

... Appellants

Versus

Rajender Singh and ors.

... Respondents

FAO No.6691 of 2019 (O&M)

Anand and anr.

... Appellants

Versus

Suman and anr.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sumit Sangwan, Advocate for the appellants.
Mr. Ajay Vijarania, Advocate
for respondents No.1 to 4 in FAO No.6609 of 2019
for respondent No.1 in FAO No.6691 of 2019.
Mr. Puneet Sharma, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.6609 and 6691 of 2019 as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from FAO No.6609 of 2019.

Counsel for the appellants, at the outset, would inform that he confines his grievance only in respect of recovery right given in favour of the insurance company on the question of driving licence. It is argued that since Anand appellant No.1/respondent No.1 therein had a valid licence to drive the tractor, findings of the Tribunal that he was not duly licensed to drive the tractor attached with trolley should not be allowed to sustain and may be set aside.

Counsel representing the insurance company, on the other hand, would argue that the insurance company raised two issues to challenge its liability to pay compensation namely the vehicle being used for commercial purpose as against policy obtained for use of tractor for agriculture purpose and driver did not have licence to drive a transport vehicle. It is further submitted that though the Tribunal noticed contention of the insurance company with regard to use of vehicle for commercial purpose but the same was not decided. He has supported findings of the Tribunal on the question

of driving licence on the basis whereof, the insurance company has been given right of recovery after payment of compensation to the claimants.

I have heard counsel for the parties, perused the paper book particularly the award.

Perusal of the award would reveal that the insurance company raised a plea that the vehicle was used for commercial purpose as against the purpose for which the same was insured and the said plea was reiterated during the course of arguments, as has been noticed in para 31 of the award. The Tribunal, for the reasons best known, did not address this question while recording its conclusion. Meaning thereby that contention raised by the insurance company with regard to violation of policy conditions on account of use of vehicle for commercial purpose remains undecided.

Findings of the Tribunal on the question of driving licence for want of necessary endorsement authorising the driver to drive a transport vehicle cannot be allowed to sustain as the driver had a licence to drive the tractor. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Nagashetty Vs. United India Insurance Company Limited, 2001(4) RCR (Civil) 597** and **Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 (7) Scale 731**. In this view of the matter, findings of the Tribunal that driver did not possess valid licence to drive the offending vehicle are erroneous and set aside. As a consequence, recovery right given to the insurance company on the question of driving licence also stands set aside. Accordingly, the insurance company shall be jointly and severally liable to pay compensation.

Since the Tribunal has not decided the question of violation of policy conditions on account of use of vehicle for commercial purpose, matter is remitted to the Tribunal to the aforesaid limited extent for decision afresh.

In view of what has been discussed hereinbefore, the appeals are partly allowed in the aforesaid terms. The matter is remitted to the Tribunal for decision on the aforesaid question. As the issue with regard to use of vehicle for commercial purpose or otherwise is a dispute *inter se* the insured and insurer, the Tribunal would not bother the claimants or driver of vehicle for deciding the said question. The parties through their counsel are

directed to appear before the Tribunal on 20.02.2020. The Tribunal shall decide the matter within a period of 3 months of parties putting in appearance.

29.01.2020

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No